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In Memoriam.

JOSIAH GARDNER ABBOTT.

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MEMOIR

OF THE

Hon. Josiah Gardner Abbott, LL.D.,

READ BEFORE THE

OLD RESIDENTS' HISTORICAL ASSOCIATION

OF THE CITY OF LOWELL, NOVEMBER 24, 1891,

BY CHARLES COWLEY, LL.D.,

WITH THE

PROCEEDINGS OF THE BAR

ON THE OCCASION OF

JUDGE ABBOTT'S DEATH,

AND

HIS DRAFT OF AN ADDRESS FOR THE MINORITY OF THE ELECTORAL COMMISSION OF 1877, TO THE PEOPLE OF THE UNITED STATES.

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HON. JOSIAH GARDNER ABBOTT, LL. D.

A MEMOIR.*

The death of Judge Abbott on the second day of last June startled the community by its suddenness. His sickness had lasted only ten days, and had been little known beyond his law office in Boston and his summer home at Wellesley Hills. It did not develop any symptoms of a dangerous character until the last day preceding his death. It began with the grip and finally assumed an acute bronchial form.

The notices of his life which have appeared in the public journals have been kind and appreciative, though not so full in the recital of facts as those who know him best might reasonably desire. The citizens of Wellesley expressed their sense of his worth and of their loss by resolutions and addresses at a public meeting called for that purpose. If that precedent has not been followed in Lowell, it is not because his merits are less appreciated in this city, though thirty years have passed since he ceased to live here. A new generation has come upon the stage of action during those thirty years, which cannot be indifferent to a life so recently closed, and so conspicuous for ability, activity and public spirit.

Nine generations of the Abbott family have flourished in the colony, province and commonwealth of

* Reprinted from the Contributions of the Old Residents' Historical Association of the City of Lowell, Vol. V, No. 1.

Massachusetts, including the judge and the children and grandchildren who survive him. The pioneer of the family was George Abbott, an English Puritan, who was born in 1615, came from Yorkshire in 1640, and was one of the settlers of Andover in 1643. The second American Abbott among the judge's ancestors, was Timothy Abbott, who, when thirteen years old, during King Phillip's war, was captured by the Indians and held in captivity for several months. His brother Joseph was killed by them. The third was another Timothy, and the fourth Nathan, who was the first to be relieved of the necessity of living in a garrison house.

The fifth American Abbott was Caleb, whose wife was Lucy Lovejoy, and whose wife's sister was the second wife of the father of the late Jefferson Davis of Mississippi. Thus J. G. Abbott's grand-aunt was the stepmother of the president of the Southern Confederacy. In 1855, while a student in Judge Abbott's office, I visited Washington for the first time, and was introduced by Caleb Cushing, then attorney-general, to Jefferson Davis, then secretary of war. Neither of us then dreamed that we were within six years of such a struggle as the war of secession; and I remember that in the conversation I then had with Mr. Davis, he spoke of the Lovejoys and also of the Maynards as Massachusetts families to which he was allied, and intimated a purpose to visit New England when he had left the cabinet of President Pierce, and to learn more than he then knew of its people.

The sixth in the line of Judge Abbott's American ancestors was his father, Caleb Abbott, who removed from Andover to Chelmsford, married Mercy Fletcher, daughter of Josiah Fletcher, and carried on the business

of a country merchant at Chelmsford Centre. He died in 1846; his wife died twelve years earlier.

The Fletcher family to which Judge Abbott's mother belonged were English Puritans who came from Devonshire and settled in Concord, and in 1653 in Chelmsford. William Fletcher, one of these first settlers, owned a large part of the territory which in 1826 was incorporated as the town of Lowell, and built his log cabin near where the City Farm buildings now stand. It is said that Josiah Fletcher, one of his descendants, and one of Judge Abbott's mother's ancestors, married Mary Chamberlain, daughter of the man so renowned in Indian war history for having killed the famous chief, Paugus, though I do not find this in the Genealogy of the Fletcher Family.

Among the nearest neighbors of the Fletchers were the Pierces, whose dwelling house stood near the corner of Chelmsford and Forrest streets. At the time of the Revolution the head of this family was Benjamin Pierce, who became a brigadier-general, governor of New Hampshire, and father of Franklin Pierce, president of the United States.*

Both the grandfathers of Judge Abbott were present at the battle of Bunker Hill, and in the war of Independence. His grandfather Fletcher was for some time in Captain John Ford's company, and rose himself to the rank of captain.†

Josiah Gardner Abbott was of the seventh generation of American Abbotts, being the second son and the fourth child of Caleb Abbott and Mercy Fletcher. According to the town clerk's records he was born in

*The best memoir of Governor Pierce is that of the late Joshua Merrill, read before this association, and published in the third volume of its Contributions.

† See Abbot's History of Andover, Bailey's History of Andover, and the Genealogies of the Abbott and Fletcher Families respectively

Chelmsford November 1, 1814, and that is his birth-date as given in the Abbott Genealogy; but for many years he supposed that his birth took place a year later.

The best domestic influences formed his character as a boy. Four events took place during his youth, which contributed to stimulate and enlarge his mind. First, the Unitarian movement, into which his father entered with zeal, and helped to carry the church of Chelmsford out of the Calvinism of the Mathers into the liberalism of Channing. Second, the disruption of the Federal party and the rise of Jacksonian democracy, which was espoused alike by the father and the son. Third, the starting of the North American Review and the development of American literature, of which J. G. Abbott was a reader and a lover from the first. The day of town libraries had not yet dawned; but the people of Chelmsford were in advance of their times, and they established a library by voluntary combination, which was placed in J. G. Abbott's father's store. All of these events, particularly the establishment of the library, contributed to develop the mind of J. G. Abbott to an extraordinary degree of activity and power.

In the summer of 1823 he was old enough to be permitted, with an older brother, to go off some three miles from his home at Chelmsford Centre to attend a brigade muster near Middlesex Village. It is worthy of note that even at that early time of his life he felt greater interest in the Merrimack Manufacturing Company, which was then preparing to start its first water-wheel, than in the evolutions of "the embattled farmers," "the thunder of the captains and the shooting."

"I recollect," he says, "we gave up the delights and attractions of the muster-field and soldiers and their sham fights, and trudged on some two miles farther to

look at the beginning of the place which is now Lowell, and of which I had heard so much talk in the country round about. All I could see was one of the Merrimack Mills, the walls of which were partly finished; but all the surroundings were quiet and even wild enough, with only a few hundreds of people, where now [1876] yon number fifty thousand. The recollection of that visit in my early boyhood, has always been very vivid with me, and at times it is difficult to realize the changes going on under my own eyes, in so short a time." *

After viewing this first mill of the Merrimack Manufacturing Company, these young visitors trudged on down to Bradley's Ferry, near the present site of Central Bridge.

It is not likely that young Abbott turned his face toward Chelmsford on that day, without a passing glance at the commanding bluff in Belvidere, where St. John's Hospital now stands, where then towered the famous yellow house, the residence of Judge Livermore, with its large and well-kept lawn, adorned with Lombardy poplars, beneath whose shade perhaps at that very moment, the fair young girl, Caroline Livermore, jumped her rope, in utter unconsciousness that her future husband was so near — "so near and yet so far."

From Bradley's Ferry the Abbott boys walked to the farm-house of their cousin, Joseph Fletcher, which stood near the well which may still be seen, covered by a millstone, near the northwest corner of the South Common. There they obtained refreshments, together with information as to the families of the neighborhood. An old log-house, standing partly on the site of the Eliot Church and partly on the adjoining land of Mr. John

* From Judge Abbott's letter in the Proceedings in the City of Lowell at the Semi-Centennial Celebration of the Incorporation of the Town of Lowell, March 1, 1876, p. 83.

Dennis, was pointed out to them as the meeting-house in which the Rev. John Eliot preached to the Indians of Wamesit. Two ancient elm trees shaded this relic of the seventeenth century, which was no more to be seen when the Abbott boys next came to this place some years later.*

This first visit of J. G. Abbott to what is now Lowell, preceded by from four to five years that spring afternoon when another slender boy, Benjamin F. Butler by name, stood for the first time on Christian Hill and enjoyed the panorama of the valley at the confluence of the Concord and Merrimack Rivers, which, as he says, "glistened in the sunlight, so that the picture is nearly as vivid now to his memory as when it first struck his wondering eyes." †

Chelmsford had a classical school which Abbott attended.‡ For four months, from September, 1825, to January, 1826, this classical school was taught by Ralph Waldo Emerson, and the impression made by him upon young Abbott was very favorable. To the last Judge Abbott always spoke of "the American Plato" in terms of praise.§

His next teacher in that school was the Rev. Abiel Abbot, a very able man, whom Harvard College afterwards honored with the degree of doctor of divinity, and of whom a full account may be found in "Sprague's Annals of the American Pulpit." Miss Antoinette Abbott, the only surviving child of Judge Abbott's

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*Greene's Semi-Centennial Volume of the Eliot Church, pp. 148, 297–301; Lowell Morning Mail, May 21, 1888, and June 16, 1892.

† General Butler's Oration in the Proceedings before quoted, p. 37.

‡ For an account of the remarkable men who attended this school, see Perham's History of Chelmsford, in the History of the County of Middlesex, published by Lewis & Co., Philadelphia, Vol. 2, p. 263.

§ Holmes' Life of Emerson, pp. 49, 50.

parents, writes: "I have often heard my brother say that Dr. Abbot was one of the most thorough teachers he ever had." Dr. George B. Loring eulogizes Dr. Abbot as a noble representative of the best type of our New England character in form and feature and cast of mind; and on meeting Mr. Gladstone, in 1889, he wrote that Mr. Gladstone strongly resembled Dr. Abbot.*

Dr. Abbot was succeeded by Cranmore Wallace, under whom Abbott studied for more than a year, and then, in 1828, entered Harvard College. Mr. Wallace afterwards taught school in South Carolina, and was always well spoken of as a teacher by the Abbotts.

In 1832 Mr. Abbott graduated. It was during his college life that the nullification troubles reached and passed their crisis, and the firm foot which President Jackson put upon that movement, made him more than ever before a Jackson man.

For a time he taught the Fitchburg Academy. The months which he spent as a teacher, I have heard him say, were among the most important of his earlier life, by reason of their ripening influence upon his mind, and the completer command which he thereby acquired of his previous acquisitions, as well as the new stores of knowledge which he then added to his former stock.

He began the study of law in the office of Joel Adams, near his father's home at Chelmsford Centre. Mr. Adams was a successful lawyer, though his court practice was never large; and Mr. Abbott appreciated and commended his acute legal mind.

On the night of July 2, 1834, the figure of President Jackson was cut and carried away from the frigate Constitution, at the Charlestown Navy Yard. Young Abbott

* Loring's Year in Portugal, pp. 5, 6.

fully shared the indignation which that event excited among democrats. In 1861 this figure came into the possession of Mr. Jonathan Bowers, and now adorns his hall at Willow Dale. It is impossible for one who looks at it now, and who has no personal recollection of the teapot tempest of 1834, to realize how much passion the taking away of that figure actually aroused.

In the autumn of 1834, Mr. Abbott took up his abode in Lowell and entered the law office of Nathaniel Wright. He was followed very soon by Mr. James B. Francis, then at the beginning of his distinguished career as an hydraulic engineer.* These two young men, destined to attain the heights of their respective professions, boarded in the same house, and formed a friendship which was ended only by Judge Abbott's death. In the summer of 1835 both of these fellow-boarders narrowly escaped death by typhoid fever, caught probably from the same drain.

In the letter already quoted, Judge Abbott says: "My acquaintance with Lowell began with the latter part of 1834, when it had a population, I believe, of about twelve thousand. I think all who lived there at that time and for the next twenty years, will agree with me in saying that no city of its size, ever contained a more remarkable people, or a pleasanter or more cultivated society. I doubt if any place of as large a population, ever had within its borders a larger number of very able men, who would be marked and remarkable in any community."

If this language seems extravagant, I am sure it is sincere. Curiously enough, Wendell Phillips, who left Lowell about the same time when J. G. Abbott took up

* For an outline of this career see Charles C. Chase's History of Lowell, in the History of the County of Middlesex, already quoted, p. 14.

his residence here, bears similar testimony to Lowell society as he saw it.*

In April, 1836, the town of Lowell was incorporated as a city. Mr. Abbott's personal preferences were for a non-partisan administration of municipal affairs. The fact that one citizen favored a high tariff and another a low tariff, that one favored a national bank and another favored state banks, was not in his judgment a sufficient reason for excluding the one or the other from an equal share in the exercise of municipal functions. But neither party was willing to waive the chance to elect candidates of its own exclusive choice. The only office under the city charter ever held by Mr. Abbott, was that of director of the city library, which he held for the year 1852. His son, Samuel A. B. Abbott, Esq., has followed his father's principles in the management of the Boston Public Library, being chairman of its board of trustees. In deciding who shall be employed in that justly renowned library, party considerations have no place.†

In November, 1836, Mr. Abbott was elected a member of the house of representatives for the year 1837. Two of his colleagues from Lowell in that house, are present to-night, Hon. Josiah G. Peabody and Hon. James K. Fellows. Among other members of that house deserving honorable mention, were Julius Rockwell, the speaker, afterwards judge, Robert C. Winthrop, John C. Park, Thomas Whittemore, Samuel Bowles, Amos Abbott, afterwards Representative in Congress from the Lowell district, and Charles P. Huntington, who afterwards served with Judge Abbott upon the bench. The senate

* See Mr. Phillips' statement in Cowley's History of Lowell, p. 119.

† In 1870 Judge Abbott served as one of the Examining Committee of the Public Library. Ten years later Samuel A. B. Abbott, his son, served in that capacity. From 1879 to the present time he has been one of its trustees, and for the last four years chairman of the board.

of 1837 contained Charles Allen of Worcester, afterwards Chief Justice of the Superior Court, Myron Lawrence of Belchertown, William Livingston of Lowell, and Linus Child, afterwards of Lowell. The governor was Edward Everett, who adorned every position to which he was called. Mr. Abbott's estimate of Samuel Bowles was considerably higher than that formed by other men at that time, though none too high, as the success of the Springfield Republican under his management abundantly proved. But the man who made the deepest impression on Mr. Abbott's expanding mind, was Robert Rantoul, Jr., the leader of the Jacksonian democracy in the house. Rantoul perished in his prime, and few survive of those who knew him. But no man who reads his "Memoirs, Writings and Speeches," will wonder that a mind so well stocked with large and grand ideas, and so capable of clothing them in forcible language, should have exerted a decided influence over the youngest member of the house. Some of the reforms for which Rantoul fought have long since been embodied in statute law, and have ceased to be thought of; but they were "burning questions" in 1837 and for many years thereafter.

In January, 1837, Mr. Abbott was admitted to practice as an attorney and counsellor-at-law. His first client was Daniel Raymond Kimball, who remained his client as long as he lived. He died in 1859 and Mr. Abbott settled his estate as executor of his will. The friendship which Mr. Abbott thus early formed for Raymond Kimball was extended to John F. Kimball, nephew of Raymond and president of the Appleton National Bank, and continued for nearly forty years and was never broken during his life.

His first law partner was Amos Spaulding. Owing to the financial disasters of the year 1837 hundreds be-

came insolvent, and the firm of Spaulding & Abbott received from their business during that year about $5000.

Mr. Abbott was but ten months older than Richard H. Dana, Jr., who was for many years his contemporary at the bar, but he had made a brilliant start in his chosen profession, and had closed his career in the house of representatives before August, 1837, when young Dana made that voyage from Boston to California, the story of which he has told so well in his "Two Years Before the Mast."

The Western fever was then prevalent in the Eastern States. Caleb Fletcher Abbott had removed from Chelmsford to Toledo, and was anxious that his younger brother should also remove to Toledo and become his law partner there. J. G. Abbott would, perhaps, have yielded to these solicitations had they not been controlled by more powerful attractions, the nature of which may be inferred from the following announcement in the local papers of that time:

"Married in this city, July 21, 1838, by the Rev. Theodore Edson, Josiah G. Abbott, Esq., to Miss Caroline Livermore."

That event determined that Mr. Abbott should run an Eastern and not a Western career.

In the life of Mr. Abbott, as in the lives of Mr. Evarts, Mr. Benjamin, and many other American lawyers, great and small, there was an episode of journalism. In 1840 he edited the Lowell Advertiser and advocated the re-election of President Van Buren as the representative of Jacksonian democracy. The Advertiser was of course a partisan journal. All the public journals then in the country were partisan except the New York Herald and Garrison's Liberator. But apart from its politics, Mr. Abbott gave to the paper a decided literary flavor. Like

Lord Bacon, "he took all knowledge for his province." The files of the Advertiser, preserved in the City Library,* show that even as a journalist,

> "—— he bore without abuse
> The grand old name of Gentleman,
> Abused by every charlatan,
> And soiled with all ignoble use."

Many a well-turned paragraph appeared, which owed its origin to the fact that a lawyer was at the helm, and yet his paper had no odor of the law office, and was never used as an aid to his practice at the bar.

One of the worst abuses of journalism in our times is the use of newspapers for or against parties to causes before or during trial. In the case of Mrs. Hannah Kinney, who was tried in Boston, in December, 1840, on an indictment for poisoning her third husband, George T. Kinney, the temptation to give vent through the press to the prevailing impressions against the defendant, was unusually strong. Mrs. Kinney had been the wife of the Rev. Enoch W. Freeman, the popular pastor of the First Baptist Church in Lowell, and was vehemently suspected of having caused his death by arsenical poisoning.† Nevertheless, not a word appeared in the Advertiser's notices of the progress of the case, calculated to aid or hinder the prosecution or the defendant. As soon as the case had ended; that is to say, as soon as it was proper for an editor to express an opinion upon it, Mr. Abbott condemned the conduct of Attorney-General Austin in undertaking the prosecution without further proof.

It was while Mr. Abbott occupied the editorial chair that the Lowell Offering appeared, and no journal greeted

* The volume for 1840 is one of those presented to the city by the heirs of Fisher A. Hildreth.

† Charles Cowley's History of Lowell, pp. 111–114.

it with a warmer welcome than the Lowell Advertiser. While he deplored any condition of society which compelled married women to work for wages outside of their homes, he gave his deepest sympathies to the factory girls in all their aspirations for intellectual and moral culture, as well as in their struggle for the means of living.

While Mr. Abbott edited the Advertiser, the late Daniel S. Richardson, who had already been admitted to the bar, edited the Lowell Courier. Nathaniel P. Banks, afterwards more widely known as speaker, governor and major-general, succeeded Mr. Abbott as editor of the democratic organ in Lowell.

In those days lyceum lectures were much in vogue. On many occasions Mr. Abbott rode out to some town, frequently accompanied by his wife, gave a lecture on some topic of the time, and drove back to Lowell the same night.

In 1842, having some time previously dissolved his connection with Mr. Spaulding, Mr. Abbott formed a copartnership with Samuel A. Brown, which continued till 1855. Much might be said of these law partners, especially of Mr. Brown, who was a very superior man; but time would fail.

In 1842 he purchased of his mother-in-law a tract of land on Stackpole Street, and built a stone house thereon, in which he resided till 1861. Many of the shade trees on Stackpole Street were planted by him. The songs of the birds in those trees, the murmur of the river below, all the voices of nature in that region, pleased him.

In 1842 and 1843 Mr. Abbott served the state as a senator, being on the two most important committees—the judiciary and railroads. The committee on the judiciary has always been considered of the first impor-

tance; but in the infancy of our railroad corporations, the importance of the committee on railroads was very great; and the results of our early railroad legislation are still felt—sometimes for evil, but more generally for good.

During the year 1843 J. G. Abbott was attached to Governor Morton's staff as senior aide-de-camp.

On August 16, 1843, a meeting of the Abbott family was held in Andover, which appointed Rev. Abiel Abbot, D. D., of Peterboro', Rev. Ephraim Abbott of Westford, Samuel Abbott of Charlestown, and Hon. Josiah G. Abbott of Lowell, to erect a monument to George and Hannah Abbott in their burial place in the South Parish of Andover, and also to prepare a genealogical register of their descendants.

Dr. Abiel Abbot wrote the History of Andover and the Genealogical Register of the descendants of George Abbott of Rowley, Thomas Abbott of Andover, Arthur Abbott of Ipswich, Robert Abbott of Bradford, Conn., and George Abbott of Norwalk, Conn. In this he had Rev. Ephraim Abbott, of Westford, as co-worker. The Genealogy was published in 1847.

When Mr. Littell started his Living Age, in 1844, Mr. Abbott became one of his first subscribers, and he continued to take it and read it till his death. He was equally constant in his patronage of the Lowell Vox Populi, started, partly by his aid, three years before.

Of Judge Abbott's part in founding the city of Lawrence (1845), his brother-in-law, Hon. Daniel Saunders, has spoken in a letter to be published with this paper, showing him to have been one of the fathers of that city. It is by no fault of his that Lawrence stands on the opposite side of the Merrimack from that on which it should have been builded.

How important a part he bore in the upbuilding of Lewiston is but partially indicated by the number of shares of the Lewiston corporations owned by him, or by the number of years during which he was president or director of those corporations. He had an aptitude for large enterprises, and delighted to exercise his powers in various ways.

Among his investments, those in woodlands must not be forgotten. He began the purchase of woodland in several different towns at an early age, and continued it till the shadow of three score years and ten had passed over him. He never sold one of his wood-lots, and he employed Amos Brown and his son and grandson to cut his wood for fifty years and until his death.

About the year 1846 the "Melvin Suits" came to an end, and Grenville Parker, who had been of counsel for the defeated parties, published anonymously his pungent pamphlet on the Judiciary of Massachusetts, reviewing and condemning the rulings of the judges in those cases. John P. Robinson's paper in the second volume of the Contributions of this association presents the other side of these cases, which excited a great deal of feeling at the time. The tide of opinion never ran higher against corporations than when the Proprietors of the Locks and Canals on Merrimack River obtained final judgment in the last of these suits. Although Abbott and Brown afterwards became and for many years continued to be the counsel for the victorious corporation, neither of them ever failed, upon proper occasion, to express his dissent from some of the rulings which Parker condemned.*

In 1847 the Appleton Bank, now the Appleton

* Grenville Parker passed his later years in West Virginia, and took an active part in procuring its admission into the Union.

National Bank, was incorported. Mr. Abbott immediately commenced to make his deposits there, and continued to do so during his life. In fact he never opened any account elsewhere, but during the whole thirty years of his life in Boston, he made all his deposits in that bank through its Boston correspondent. That fact tells it own story as to the sound and wise management of the bank, and the constancy of Judge Abbott's attachments.

In 1848 he "bolted" the democratic nominations — Cass and Butler — for president and vice president, and supported the free soil nominees — Martin Van Buren and Charles Francis Adams. He and Hon. Chauncey L. Knapp were chosen delegates to the national free soil convention, but his professional engagements prevented him from going to Buffalo, and George F. Farley, Esq., of Groton, attended as his substitute.

In 1850 Mr. Abbott was appointed master in chancery, and served as such five years, Hon. Arthur P. Bonney succeeding him.

In 1852, when Kossuth made his tour through the United States, Abbott gave him both sympathy and material aid, and was one of the citizens' committee who invited him to Lowell, and introduced him to the people in St. Paul's Methodist Episcopal Church.

Had the office of attorney-general become vacant during Governor Boutwell's time (1851–52) it was understood that Mr. Abbott would have been appointed, so well established was his reputation at that time.

In 1853 he was elected a delegate to the constitutional convention on the coalition ticket. The new constitution proposed by the convention was rejected by the the people of the state, but the debates in that body prepared the way for the adoption of some of the amend-

ments to the constitution which that convention proposed. This was the only legal body in which Judge Abbott ever sat with George S. Boutwell, Alexander H. Bullock, Benjamin F. Butler, Anson Burlingame, Rufus Choate, Richard H. Dana, Jr., Henry L. Dawes, Charles Sumner, Frederick O. Prince, or Henry Wilson. James K. Fellows, who had been one of his colleagues in the house of representatives in 1837, was one of his colleagues in this convention. Shubael P. Adams, then a Lowell lawyer, now of the Iowa bar, was another of his colleagues from Lowell, and General Butler was another. The rest of the Lowell delegates, John W. Graves, Andrew T. Nute, James M. Moore, Abraham Tilton, and Peter Powers, together with all the defeated whig candidates, have passed to the silent land.

The debates of that convention show that Mr. Abbott favored an elective judiciary, and also favored making the jury judges of law as well as of facts in criminal cases. A notable debate on the right or the power of the jury, under the decisions of the Supreme Court,* to determine the law as well as the facts in a criminal cause, took place between Mr. Abbott and Ex-Governor Morton, without disturbing the friendly relations which had for many years existed between the disputants. Two years later the legislature passed an act intending to embody Judge Abbott's views, which were also the views of many others, including eminent lawyers of all parties.† But in the case of Commonwealth *v.* Anthes, 5 Gray, 185, a majority of the judges of the Supreme Judicial Court decided either that this act did not change the law as it

* Commonwealth *v.* Porter, 10 Metcalf, 263 (1845).

† This jury act of 1855 is embodied in Chapter 214, Section 17, of the Public Statutes, though sadly eviscerated by the opinions of a majority of the judges in Anthes' case. This was one of the decisions at which William S. Robinson ("Warrenton") delighted to discharge the arrows of his wit.

previously stood, *or* that if it did attempt to change the law and make the jury judges of the law, it was unconstitutional and void. The dissenting opinion of Judge Thomas in that case met Judge Abbott's hearty concurrence; and I remember hearing him quote an old English ballad as stating the ancient and true view of the functions of the jury in Crown cases, and I give it from memory as he did:

> "For twelve honest men shall sit on his cause,
> Who are judges alike of the facts and the laws."

After Mr. Abbott had gone upon the bench, his former law partner, Samuel A. Brown, re-argued this question and re-asserted Judge Abbott's views, in the case of Commonwealth *v.* Austin, 7 Gray, 51, but without changing the attitude of the Supreme Court thereon.

When Judge Abbott had formed an opinion after mature deliberation, he was not easily moved. The mere *ipse dixit* of a judge weighed little with him, and where he saw a court palm off a pretext as a substitute for a reason, he did not hesitate to express his dissent in forceful terms. But nothing that he ever said, in the Constitutional Convention or elsewhere, could justify Mr. Dana in referring to him in his diary as feeling anything like a hatred toward the Supreme Court.* If the decisions of that tribunal did not always suit him, it was "more in sorrow than in anger" that he signified his disapprobation of the error into which it had lapsed.

In 1855 the Superior Court for the County of Suffolk was established, superseding in that county the old Court of Common Pleas. Its members were Albert H. Nelson, of Woburn, one of Abbott's classmates at college; J. G.

* Adams' Biography of Richard H. Dana, Jr., Vol. I, pp. 240, 242, 243. Mr. Causten Browne showed a far better appreciation of Judge Abbott when he said that he was too proud as well as too generous for any vindictiveness.

Abbott, of Lowell; Charles P. Huntington, of Boston, formerly of Northampton, and Stephen G. Nash, of Boston.

Judge Abbott accepted this appointment with three ends in view: First, to make a good judge, and win such reputation as usually attends a good magistrate; second, to secure for himself a period of comparative rest from the severer labors of the bar; third, to get such an introduction to the bar and business community of Boston as would secure for him, upon quitting the bench, a fair share of the cream of the law business of that city. All these ends he accomplished. The facility with which he despatched business was very great. On one motion-day there were no less than forty-six hearings before him on contested motions which he decided. He was always honest and fair in dealing with counsel. When exceptions were taken to his rulings, he never sought to deprive counsel of the benefit of those exceptions.

One day, in the spring of 1857, I sat in his court for an hour or so, and when he adjourned walked with him to the depot. I remarked that he seemed to enjoy his position. "Oh, yes," he replied, "it's pleasant work and far less exhausting than trying cases at the bar. But I have had enough of it, and can't afford to stay on the bench. Don't mention it at present, but I shall not stay on that perch after this year."

His resignation took effect January 1, 1858. He resumed practice at the bar for the sake of its emoluments, and he did not fail to get them. His salary as a judge was only $3,000 a year; and his income from his practice during the first year after he left the bench was more than $29,000. It afterwards rose to $36,000. These figures represent the returns from regular work, without any of those "windfalls" with which lawyers

are sometimes favored. Large as they are, the professional incomes of lawyers have sometimes exceeded them. The income of Judah P. Benjamin, while at the head of the British bar, is said to have amounted in some years to $75,000.*

It happened to me to be present when Mr. Benjamin made his first argument in an English Chancery Court.† It was in the year 1868 in London. I had heard him years before in the Supreme Court of the United States, as well as in the senate at Washington. As I listened to that marvelous feat of advocacy and saw how marked an impression Mr. Benjamin made upon the court, the bar and the bystanders, the question arose, how would J. G. Abbott have succeeded had he essayed a career at the English bar? Between Abbott, with his tall, well-proportioned form, his Saxon face and Saxon voice, on the one hand, and Benjamin, with his short and obese body, his Hebrew face and soft Semitic tongue, the differences were marked. And yet there were marked resemblances between the minds and methods of those giants of the forum. There was the same clearness of statement, the same mastery of the case, the same earnest, impetuous, on-rushing tide of speech, flowing without ebb; the same care as to the matter of the argument; the same carelessness as to the form, in both. In my judgment Mr. Abbott would have achieved success, had he sought it, at the bar of the Babylon of London. But my admiration for him was such that I cannot pretend to present any estimate of him as entitled to the weight of an impartial

* Dictionary of National Biography, Art. Benjamin.

† Two cases were heard together, in both of which the United States were plaintiffs. The defendants were Frazer, Trenholm & Co., and John Frazer & Co. Sir Roundell Palmer, now Earl of Selborne, was Benjamin's leading opponent. The plaintiffs prevailed, and, as the legal successors of the Confederate States, recovered a large amount of Confederate property in the defendants' hands.

opinion. I prefer therefore to sketch with rapid strokes the outline of his life, and to give the opinions of others, rather than my own, touching his professional traits.

In 1859 Judge Abbott was chosen one of the overseers of Harvard College, and served as such six years.

In 1859 J. G. Abbott, G. B. Upton and George S. Boutwell, were appointed commissioners under the legislative act of that year to make an award to the city of Boston of compensation for its relinquishment of certain rights on Arlington Street.

In 1860, when George T. Bigelow succeeded Lemuel Shaw as Chief Justice of the Supreme Judicial Court, Judge Abbott was offered a place on that bench, but declined it for the same reason which had led him to resign his position on the Superior Court.

In 1860, as a choice of evils, he voted for the Douglass ticket for presidential electors.

In 1861 Judge Abbott removed from 128 Stackpole Street, Lowell, to 6 Arlington Street, Boston. But, although he ceased to be a citizen of Lowell, he never lost his interest in this community. In the letter already quoted he says: "As you know, I have passed some of the happiest years of my life in Lowell, and with it are connected some of the pleasantest and best recollections of the past. I took up my residence there soon after leaving college; there I married my wife; there all my children were born; and there repose the ashes of some of them who so lived and died that I am sure their native city has never had cause to be ashamed of them."

Judge Abbott had early learned in the school of Jackson that the Union is an institution to be maintained, if necessary, by force; and when that Union was menaced with destruction in 1861, all who knew him knew what his position would be. Like his friend, Rufus

Choate, he would say, "We join no party that does not carry the flag and keep step to the music of the Union." The first flag raised in Lowell after the Confederate assault on Fort Sumter was accompanied by an eloquent appeal from him which completely electrified the assembled throng.

When the militia of Lowell were called to Washington for the defence of the capital, even before a man of them had buckled on his knapsack, Judge Abbott gave General Butler $100, to be used for the relief of any suffering among his soldiers. He appeared before a meeting of the bank presidents of Lowell and urged them to lend their money freely to the government to carry on the war. Like Gen. William T. Sherman and other far-sighted patriots, whom shallow men then pronounced "cranks," he foresaw that the war for the Union would be long and bloody, and urged the enlistment of men for not less than three years' service. His three oldest sons entered the army at once, and two of them were sacrificed in the bloody struggle. The Abbott Greys, the company which his oldest son commanded, in the Second Regiment of Massachusetts Infantry,* were the special subject of his care and for them he contributed freely of his money.

Seeing how much the officers and men rallying for the defence of the Union, required to be taught what their duties would be, Judge Abbott wrote a letter to Governor Andrew recommending the formation of camps of instruction. From the plans submitted by him, the Camp Act, so called, the principal bill passed by the leg-

* Fletcher Morton Abbott, M. D., the only one of Judge Abbott's three sons who served in the army who survived the war, began his military career as a lieutenant in this regiment, and afterwards served as captain on the staff of Brigadier-General Dwight. See Quint's Record of the Second Massachusetts Infantry, p. 497. General Hooker said, "This regiment, as is known in two armies, has no superior."

islature at the extra session of 1861, was prepared before the session began. The training received by our volunteers during their brief sojourn at these camps, was of very great value.

When the republican state convention met at Worcester in September, 1861, to nominate candidates for the state offices, its members realized the necessity of enlarging their platform in order to attract, if possible, the war democrats. It was felt that it was desirable in that perilous crisis in national affairs, to make the party simply a war party and to postpone all other issues until the war for the Union had ended. Without one dissenting voice, if my memory serves me correctly, that convention nominated J. G. Abbott for the office of attorney-general. The wisdom of that nomination was too obvious for discussion, and many of the judge's friends, democrats as well as republicans, urged him to accept it. Since that time some persons of a very miscellaneous sort have filled that office; but prior to that time it had been held by lawyers of the first rank, and Judge Abbott's reputation, if not enhanced, would surely have suffered no damage, by filling an office which Rufus Choate and John H. Clifford had adorned. Nevertheless, so fastidious was his sense of personal honor and party fealty, he could not be induced to accept that office. Nothing that has occurred during the last thirty years has changed my opinion that his declinal of that office was a great mistake. It seemed to me that his true place was at the head of the Union party, and that by this declinal he closed upon himself the opening gate to a great career.

In 1862 Judge Abbott wrote: "If we would succeed we must be united in our purpose to fight it out — to conquer. All true men can and must unite to carry out that purpose — they can and must adjourn all other

questions till the war is over. That purpose is large enough, it is holy enough to engross and satisfy all." *

Truer words were never spoken, and they were as applicable to the situation in 1861 as in 1862.

Had Judge Abbott accepted the nomination, he would certainly have been elected; and the republican party, though it had an abundance of leaders, was lamentably in need of such a leader as he. On the other hand, it may be said that by remaining with the democratic party through those years of peril he performed an important service to the country by constantly bracing up that party to support the war; the more so because that party contained thousands of men who were opposed to the war.

The same wise foresight which prompted him to advocate camps of instruction and long terms of enlistment in 1861, led him to oppose the stopping of enlistments in the spring of 1862, notwithstanding the Senate Committee on Military Affairs, of which Senator Wilson was chairman, reported that we already had soldiers enough! Judge Abbott saw clearly and said boldly that the period of the war had been much prolonged, and the sacrifice of life and treasure greatly augmented by suspending the recruiting of our armies so prematurely at that time.

In 1862 Williams College conferred on him the degree of Doctor of Laws.

On the ninth of August, 1862, the horrors of war entered his own home; his eldest son, Captain and Brevet Major Edward Gardner Abbott, Company A, Second Massachusetts Infantry, was killed in battle at Cedar Mountain, Virginia; and all the hopes that clustered about his future were blasted in a moment. But this

* From a manuscript found among his papers, entitled "A Divided North, Treason."

terrible parental affliction only intensified his indomitable purpose to suppress the rebellion. When General Lee, flushed by his success in Virginia, led his victorious army into Maryland, and when it seemed not improbable that the flag of the Confederate States would shortly float in triumph over Philadelphia, Judge Abbott wrote an appeal to the people of Massachusetts to meet in Faneuil Hall, irrespective of party, "to take counsel together for the common weal." In response to this appeal "the People's Convention" met on the seventh of October. I do not now enter into any discussion of the merits of the proceedings of that convention. Whatever of success or failure attended those proceedings, the lofty patriotism which animated the call under which that convention met, is beyond all praise. There are passages in that call which for force and elevation of style will lose nothing by comparison with the stirring words of the Declaration of Independence.

On the day preceding that convention Senator Sumner had spoken in the same hall.* I heard Sumner's speech; I also heard Abbott's speech, and as I listened to the thunders of applause which greeted them, I recalled what I had read of the stormy scenes of the Greek republics, when

> "Under the rock-stand of Demosthenes
> Unstable Athens heaved her noisy seas."

Joel Parker, formerly Chief Justice of the Supreme Court of New Hampshire, had been selected to make the principal speech on that occasion. He was a learned and able man, powerful in his addresses to the intellect, but weak in his appeals to the feelings. He had none of that versatility which enabled Abbott to convince a

* Sumner's speech appears in the seventh volume of his works.

bench of judges, capture a jury, or ride upon the whirlwind of a popular assembly. No sooner had the convention organized itself, than loud calls arose for Abbott, who, as I happen to know, had made no preparation to speak on that day, though his heart and soul were full. He could stir the emotions. One blast on Abbott's bugle-horn was worth a thousand Parkers.

The day of that convention was one of those "momentous occasions" referred to by Webster in his oration at Plymouth Rock, "when great interests are at stake and strong passions excited," and Judge Abbott had just those qualities which such occasions require. "Clearness, force and earnestness," as Webster said, "are the qualities which produce conviction." The vast assembly was thoroughly electrified by his speech, particularly by the peroration. Pointing to the broad canvass on which Webster appears replying to Hayne, and raising his voice to its loudest, clearest tones, he said: "Let us here, in the presence of its greatest defender, swear that we will give fortune, that we will give life, that we will give all, to support that constitution and establish its sway over the whole land."

To realize how much these words really meant, one must recall the circumstances under which they were spoken — the fact that the oldest son of the speaker had shortly before been laid in a soldier's grave in the Lowell Cemetery, and that both of his other sons in the army were so broken in health that their mother had gone to Antietam to give them her personal care. Called to the scene of that battle by the condition of her second son, she met on the field her third son suffering from the delirium of fever in the brain. But none of these things moved him.

In the senatorial election of 1863, and again in

1869, Judge Abbott received the support of the democrats in the legislature, but the republican majority was overwhelming, and Charles Sumner was elected. The same empty honor was repeated to Judge Abbott in 1877, when Senator Hoar was chosen.

On the sixth of May, 1864, his second son, Major and Brevet Brigadier-General Henry Livermore Abbott, while gallantly leading his regiment, the Twentieth Massachusetts Infantry, in the battle of the Wilderness, was fatally wounded. "Had he lived," General Hancock said, "he would have been one of our most distinguished commanders."

Richard H. Dana, Jr., who visited the Army of the Potomac only ten days before Major Abbott's death, wrote: "Sedgwick spoke in high terms of the Massachusetts regiments, especially the Twentieth, and of Major Abbott, who now commands it. He thinks Abbott a bright, particular star." Charles F. Adams, who has preserved this testimony in his biography of Dana, adds that "it was thought at the time, by those most competent to judge, that no braver officer, nor one of greater military promise, there laid down his life."

To lose such sons as Judge Abbott lost in battle was terrible at the best. But the conviction that the movements in which they fell were culpably ill-advised and even absurd, added poignancy to parental grief. To lose brave sons when their loss is inevitable in defence of their country, has been the hard lot of many a father. To lose them through the stupidity or obstinacy of their commanders, is more than flesh and blood can bear. Many a father, many a mother, became sour and disaffected under such painful trials. But not so with the parents of these brave brothers, whose twin monuments in the Lowell Cemetery will perpetuate their names till

the marble shall crumble and the granite shall decay.* Through all those times which tried men's souls there was no truer patriot than J. G. Abbott.

Several volumes would be required to contain an account of the hundreds of cases in which Mr. Abbott acted as counsel during the more than fifty years of his practice at the bar. No such account will be attempted, neither would it be desirable even if it were practicable. For as the life of man on earth is but a span, so the interest in the daily concerns of that life endures but for a moment. "A book is the only immortality," as Rufus Choate once said; and the best efforts in advocacy are generally forgotten with the occasion which called them forth.

I will mention three capital cases and three or four other cases in which Mr. Abbott was concerned, and refer to one hundred and ten volumes of the Massachusetts Reports (from the 43rd to the 152nd) for notices of the cases argued by him before the full bench of our Supreme Judicial Court. Yet these indicate but a part of his professional work. There are other cases of his in the United States Supreme Court and Circuit Court Reports and in the reports of other state courts, and there are also hundreds of cases not reported at all (except in newspapers) because they were never carried to the court of last resort.

His first capital case was that of the alleged murderers of Jonas L. Parker, who was butchered in a most atrocious manner at Manchester, N. H., on the night of March 26, 1845.† In 1848 Asa Wentworth and Henry

* For accounts of the operations in which these gallant officers fell, see Gordon's Brookfarm to Cedar Mountain, Swinton's History of the Army of the Potomac, the histories of their respective regiments, and the general histories of the war. For their personal history, see Harvard Memorial Biographies, Vol. II, pp. 77–104, and Cowley's History of Lowell, pp. 181, 182, 189, 190.

† Potter's History of Manchester, pp. 619–624.

T. Wentworth were arrested upon suspicion, but after examination were discharged. In 1850 they were arrested again, together with Horace Wentworth and William C. Clark. They were prosecuted by Samuel H. Ayer, the county solicitor, and were defended by Franklin Pierce, Charles G. Atherton, J. G. Abbott and B. F. Butler. Public feeling ran very high against them, but they were not indicted; and no evidence sufficient to justify a verdict of guilty was ever adduced against any of them.

About the same time J. G. Abbott and B. F. Butler defended Daniel H. Pierson, of Wilmington, on his trial before the Supreme Judicial Court at East Cambridge, upon an indictment for the murder of his wife and two children. Pierson was convicted, and executed July 26, 1850. From him General Butler obtained information tending strongly to show that Jonas L. Parker was murdered by said Clark, who was a relative of Pierson. This man had been arrested and examined on suspicion, but escaped indictment by setting up a false *alibi*. Pierson also attempted to escape the gallows by a false *alibi*, but failed.

Referring to the question who murdered Parker, I am permitted to quote the following from a letter written by General Butler to a son of his client, November 5, 1885, after his client's death:

"I had been of counsel prior to that trial, as I was afterwards, for a man named Pierson, who was convicted of the murder of his wife and two children, committed in Wilmington in this state. That murder was committed in a very singular manner and with a very singular weapon, to wit, a shoemaker's knife ground to a point; and a razor was left on the table by the woman's bedside and means taken to have the murder appear to have been a suicide. That murder was not committed until some years after the Parker murder, but before the investigation of the Parker murder, as that was not

tried until some five years after the deed was committed. Upon the trial of the Parker murder it came out that the murder was committed with exactly such a knife, and a razor was left by the dead body. I was struck with the coincidence as I had grounds for suspicion against a relative of my Wilmington client, and the fact was known that on the night of the murder of Parker, which took place between nine and ten, at Manchester, N. H., a wagon drawn by a white horse, with two men in it, passed through Lowell in the direction of Wilmington, and the marks of the wheels of such a wagon were found in the mud near the murdered man, which wagon apparently drove off in the direction of Lowell. As my client was about to be hanged and it could do him no harm, I questioned him, assuring him that it should not be used to his prejudice, as to whether or not he drove a wagon that time down from Manchester to Lowell and thence to Wilmington. He admitted that he did. I asked him who was in the wagon, and he said he did not want to tell me. I asked him with what instrument it was done, and he said with a shoe knife and razor. I asked him what the razor had to do with it. "Why," he said, "the man might have cut his own throat with the razor." I asked him also what was done with the $1,000 bill which Parker was supposed to have had in his pocket which never could be traced. He said there was no $1,000 bill taken from Parker, that he hadn't any such bill. And, without remembering the circumstances now, I questioned him until I was convinced that the person I had in my mind was the man with him. But as the grand jury found no bill against my client, and as Pierson was hanged, I did not feel called upon to talk with anybody about it because I supposed there was nobody so foolish now as to believe that the Wentworths had anything to do with the murder of Parker."

Perhaps "more is meant than meets the ear" in this letter. Perhaps Daniel H. Pierson himself, as well as Clark, was implicated in the murder of Parker.*

On the nineteenth of June, 1860, Bryant Moore shot and killed his wife, at No. 61 East Merrimack Street. Under the shadow of the scaffold he wrote a strong appeal to Mr. Abbott to defend him. That appeal could not have been made at a more inopportune time, for

* Lowell Morning Mail, Nov. 12, 1885.

Mr. Abbott was then almost overwhelmed with cases. Nevertheless he could not with his high views of the duties of the bar, refuse such a call for help. He requested me to do certain things in the preparation of the defence, saying that if I would relieve him of that part of the work, he would undertake the defence. The trial took place in December, 1860, and it appeared from the start that an acquittal was impossible. The most that could be done was to save Moore from a verdict of guilty of murder in the first degree, and thus save his neck. The evidence would have entirely justified the highest verdict, but through Mr. Abbott's remarkable power of persuasion, the jury returned a verdict of guilty of murder in the second degree,—a pure triumph of advocacy. Moore's sentence was imprisonment at hard labor for life. At the end of three years, however, a pardon was granted to him, through the exertion of Mr. Abbott's powers of persuasion over Governor Andrew's Council. The number of capital cases in which pardons have thus been granted in this state, has been very small, notwithstanding the statements that have repeatedly been made to the contrary. Moore afterwards spent some years in Kentucky and Tennessee. He returned to Lowell under the name of "Col. John B. Lowe," the military title having been conferred upon him by himself. He showed deeds of land to John B. Lowe, and undertook to borrow money upon the security of a mortgage thereof, but nobody here would lend him a sou, and he left for other fields.

Mr. Abbott's criminal practice in his earlier years was very large, and if there was any merit in a case he made the most of it, but he never liked the associations which the criminal lawyer cannot avoid. He always preferred the pursuit of remedial justice; and after he left the

bench his practice was almost wholly confined to civil causes. But time would fail to mention more than two or three of them.

In 1870 Mr. Abbott and B. R. Curtis argued, before the Supreme Court at Washington, the case of the Commonwealth of Massachusetts against the Liverpool Insurance Company, 10 Wallace, 566, in which it was held that the defendants were a corporation, notwithstanding the British Parliament had said that they were not.

About the same time he argued, before the same court, the case of the Merchants' Bank against the State Bank, 10 Wallace, 604–676. Sidney Bartlett and William M. Evarts were with him, while B. R. Curtis, C. B. Goodrich and B. F. Thomas were against him. The case is one of the first importance to banks and bank cashiers. Mr. Abbott rested his case on one ground. Mr. Bartlett, his associate, rested the claims of their common client upon another. A majority of the court adopted Mr. Abbott's view and not Mr. Bartlett's. Judges Clifford and Davis dissented, and Judge Miller did not sit.

In the case of the Land Company against Daniel Saunders, 103 United States, 316, Mr. Abbott had his brother-in-law for his client, and John L. Putnam, now judge of the United States Circuit Court of Appeals for the First Circuit, for his leading opponent. Never did counsel feel surer of victory in a case than did the counsel for the Land Company. Nevertheless the decision, which relates to the construction of deeds, and is of great importance, was in favor of Mr. Saunders.

To argue questions of law before a bench of judges, requires qualities of a different kind from those which are required to argue questions of fact before a jury. How successful Mr. Abbott was in the latter field of labor, hundreds of verdicts of the impanelled farmers,

mechanics, and merchants of Middlesex and Suffolk, abundantly attest. Not less successful was he before benches of judges. Some who heard his argument in behalf of Mr. Saunders in 1880, thought it one of his best efforts. So thoroughly had he mastered and absorbed his case, he scarcely looked at his brief while he spoke. So thoroughly was he master of himself and of the situation, the presence of the most august tribunal on this continent only stimulated him to put forth his best efforts; and this he did with such clearness and lucidity, such strength and power, that when he sat down he felt that his case was won — and, to the great surprise of his opponents, it was won.

Equally surprised were his opponents at the decision won by him in the case of St. Anne's Church,* one of the most important decisions ever made touching estates upon condition as distinguished from estates in trust. In that case John P. Robinson, after many years' retirement from practice, appeared with General Butler as counsel for the church. He never argued another case, but was afterwards confirmed in that church. He cared nothing for the sarcasms levelled at him by J. R. Lowell, though they will transmit his name longer than anything that he ever said at the bar. One of them runs thus:

> "But John P.
> Robinson, he
> Says they didn't know everything
> Down in Judee."

One of the most just and most discriminating estimates of Judge Abbott, is that of Hon. J. Lewis Stackpole, of Boston, as follows:

"Judge Abbott's reputation as a lawyer was won in the court room, not in the closet. Endowed by nature with a body and mind

* See 14 Gray's Reports, pp. 586-613. See also Charles Hovey's History of St. Anne's Church in the third volume of the Contributions of this association, pp. 309-323.

of great vigor, with never satisfied ambition, and untiring powers of work, he early came in conflict with the most prominent lawyers of the Middlesex bar, and proved himself an opponent worthy of their steel. When later in life he came to the Suffolk bar, he had become an advocate well trained to encounter its leaders, who included Mr. Choate, Mr. Bartlett, Mr. Durant, Mr. Chandler and Judge Hoar.

"His power of statement of mixed questions of law and facts was unrivalled. None new better than he how to elicit facts from a reluctant or dishonest witness, and his appeals to juries were always forcible and judicious, and met with merited success. His grasp of the law was eminently a practical one, and for many years he was one of the most trusted counsellors and advocates of the Suffolk bar.

"He always possessed the confidence of the court, his kindness to younger members of the bar was proverbial, and his death is a distinct loss to the profession."

He tried a great many cases for younger lawyers; and to the junior counsel associated with him in such trials, he was always a tower of strength.

Judge John Spaulding, formerly of Groton, now of Boston, writes:

"When I entered the profession, early in the fifties, there were giants at the Middlesex bar, and a young lawyer was under the necessity of securing one of them in every important trial in order to match his opponent. The Middlesex bar was then renowned, not only for its great legal ability, but also for the thoroughness of its trials.

"Having read law with the late George F. Farley, Esq., of Groton (at that time considered at the head of the Middlesex bar), and having been admitted to practice, some of the prominent citizens of that town induced me to open my office there. I soon found myself engaged in some very important cases with my old instructor as my opponent. I therefore deemed it necessary to seek legal aid and readily found it in Judge Abbott. He was always gentle, encouraging and able, and although we waged many a hard-fought battle with giants on the other side, we were signally successful. *We never lost a case!* I recollect being often obliged to call him to my aid on the very eve of an important trial—it was wonderful how readily he would grasp the evidence and how eloquently and forcibly he would present it to the jury. I always found him a gentleman, high toned

and honorable. I looked upon him as one of nature's noblemen and shall always cherish his memory with fond recollections."

Outside of his own profession Judge Abbott was a promoter of various enterprises, in which he invested his capital and employed his talents. It would be tedious to enumerate all of the corporations in which he served as president or director, and I will mention only a few of the principal of them. For three years (1860–62) he was president of the Hamilton Manufacturing Company at Lowell. For fifteen years (1861–76) he was president of the Atlantic Cotton Mills at Lawrence. For thirty-five years (1857–91) he was a director of the Hill Manufacturing Company at Lewiston, Me. From the death of Homer Bartlett, in 1874, until his own death, he was president of that company, and was succeeded in that office by his son, Samuel A. B. Abbott, Esq., who also succeeded him as a director of the Franklin Company at Lewiston, Me. For twenty-eight years (1857–85) he was a director of the Boston and Lowell Railroad; and he was president of that corporation from 1879 to 1884, both inclusive. He was a director of the North American Insurance Company at Boston, from its organization in 1872 to his death. He was the principal promoter of the Union Water Power Company at Lewiston, and president of it from 1870 until his death. His son, Grafton St. Loe Abbott, is its treasurer.

It happened to me toward the close of the war to be brought much in contact with General William T. Sherman. The physical and intellectual characteristics of the general and the judge were much alike. Both of them had that keenness of intellect which penetrates at once to the heart of a subject. Both of them had that lucidity of mind and that quickness of movement which enables one to form mental combinations with marvellous

rapidity. They held the same opinions on the topics of that time. While not opposed to arming the blacks, both held it to be an insult to the twenty millions of white men in the North to say that they could not suppress the five millions of secessionists without the aid of the three millions of blacks. And when the Confederate forces disbanded both held that the war should cease. In nothing were they more alike than in their intellectual independence.

One of the most notable illustrations of Judge Abbott's independence of mind and self-reliance was the famous case of the Trent in 1861. The seizure of the Confederate envoys, Mason and Slidell, and their imprisonment in Fort Warren, in Boston Harbor, were the subject of the greatest rejoicing among the rash and the inconsiderate, and also among thousands who were neither rash nor inconsiderate. Statesmen and lawyers like John A. Andrew, George T. Bigelow, B. F. Butler, Peleg W. Chandler, Caleb Cushing, Richard H. Dana, Jr., Edward Everett, Theophilus Parsons, William Whiting, and a galaxy of lesser lights, glorified Captain Wilkes, and endorsed the outrage which he, without orders, had committed upon a neutral steamer plying between neutral ports. To me, on the contrary, the shouts of the populace in that critical hour presaged nothing less than the doom of the American Union. But among all the lawyers of Boston old enough and conspicuous enough to give weight to their opinions, I found but two who were in accord with me — Judge Abbott and Hon. Charles Levi Woodbury. "We can never," Judge Abbott said, "justify on our principles the seizure of these envoys aboard the Trent." * Mr. Woodbury expressed the same

* Cowley's Leaves from a Lawyer's Life Afloat and Ashore, pp. 36–38.

opinion in a letter to Postmaster-General Blair, his brother-in-law, who replied that he had already presented that view to the cabinet, but that all his associates were against him. It looked for a time as if the United States would become involved in a war with Great Britain in addition to that with the Confederate States, and that, too, upon a point upon which all the precedents were against us. Fortunately, however, we then had as our representative at the Court of St. James, Charles Francis Adams, a man not to be moved by wind and clamor. He wrote to Everett and Dana, and to all his correspondents in the United States, correcting their false views, and urging them not to stultify themselves by contending against Great Britain upon a point upon which her position was manifestly right and in harmony with our own contention heretofore. Mason and Slidell, as we all know, were given up; but it required great moral courage, as well as mental independence, to advocate giving them up when they were first brought to Boston. Abbott, Adams, Woodbury, and those of less prominence, who said, from the start, that Wilkes had erred, stood like Athanasius against the world.

In 1874 Judge Abbott was elected a member of the House of Representatives of the United States. His seat being contested, he was not admitted till near the close of the first session. It was in the session which began in December, 1876, and closed in March, 1877, that he most distinguished himself. He was a member of the special committee which the House of Representatives sent to South Carolina to investigate the facts connected with the presidential election in that state, and the report of that committee was prepared by him. N. P. Banks, who had succeeded him as democratic editor in Lowell, was one of his colleagues on this committee. He was

personally opposed to the bill creating the electoral commission, which was introduced during his absence and without his knowledge; but after that bill had been proposed by the democrats in congress and accepted by the republicans, he felt it to be his duty to see that its provisions were carried out. Had that commission been filled as it was at first intended, New York would have had a democratic representative on it and Massachusetts would not. But New York had two candidates for one place — Fernando Wood and "Sunset" Cox — neither of whom was quite such a man as the place seemed to require. Judge Abbott's friends, without his knowledge, resolved to propose his name for that place to the democratic congressional caucus. They did so, and the caucus adopted it at once.

The letter of Senator Hoar, who sat with Abbott on that commission, and the letter of General Butler, to be printed herewith, sufficiently indicate the importance of the part borne by Judge Abbott on that commission. He sat next to Garfield, who had known his brother, Caleb Fletcher Abbott, in Toledo, and who was afterwards "shot into immortality." It was Abbott's sincere conviction that by the action of that commission the office of president was given to the wrong man. But he refused to listen to the solicitations of some of his fellow-democrats to aid in preventing the completion of the counting of the electoral votes. He saw that Mr. Hayes must have the office under the forms of the constitution, or General Grant must be permitted to continue to discharge its duties *by consent*, without any title to it at all. Between these alternatives he chose the former and he never regretted it. In thus insisting on carrying out the decisions of the electoral commission, after having himself voted against those decisions in the commission,

and in insisting that Hayes should thus be accepted as president, Judge Abbott rendered a service to his country, the magnitude of which can only be appreciated by those who remember how repugnant that result was to the democratic party.

It was not known outside of a few that Judge Abbott wrote an address to the country on behalf of the democratic minority of that commission, which was put in type and one copy printed to be signed by the democratic members of the commission, but it was never signed and the original manuscript was destroyed.*

Judge Abbott was unwilling to give this proposed address to the public during his life; but I was permitted to make a copy of it, and the seal of secrecy is removed by his death.

In 1884, the democrats, after long exclusion from power, elected their candidate as president. By invitation of Mr. Cleveland's private secretary, Judge Abbott met the president-elect at Albany, and had a free and full exchange of views on the political situation and the selection of cabinet officers. I have been told by those who stood in such positions that they might be presumed to know, but never by Judge Abbott, that he was offered a place in the cabinet. If he was not so invited, he certainly should have been. A cabinet containing two ex-members of the Confederate States government, should have included at least one war democrat. Had President Cleveland sought and followed Judge Abbott's counsels, his famous message on the tariff would have undergone considerable revision before being sent to congress, and its menace to the wool industry would have been carefully excised. No people ever lost their liberties by

* For this proposed address see the February (1892) number of the Magazine of American History. See also the appendix hereto.

keeping sheep. Had Mr. Cleveland learned that important lesson, he might perhaps have been re-elected. Judge Abbott's views on the tariff were published in the Boston Sunday Globe, June 26, and republished in the Lowell Morning Mail, June 27, 1887, and in many other journals. They were in substance the same which he had published in the Lowell Advertiser in 1840.

"For many years to come," he says, "the country will have to raise from $100,000,000 to $200,000,000 a year by taxation in some form. On account of the unequal distribution of property, no method of taxation can be devised that is as fair and just as that of taxes on imports. A tariff should discriminate against luxuries and in favor of necessaries. So too it should in favor of our home industries and home labor."

In the fall of 1887, Judge Abbott suffered the greatest affliction of his life. He had lost two sons in their childhood, and two more on fields of battle. He had followed his oldest daughter and the husbands of both his daughters to premature graves. But the great sorrow of his life came with the death of Mrs. Abbott.* The following letter, written in the shadow of a home made desolate by her death, indicates his appreciation of her worth better than the words of any other man could do. It is his reply to a condolatory letter from Hon. John F. Kimball, president of the Appleton National Bank:

Boston, October 5, 1887.

My Dear Kimball:

I thank you from my heart for your very sympathetic letter; to one heart-broken as I am, sympathy from a friend is good and helpful.

You cannot, and I trust you may never know, what such a blow

* Mrs. Abbott wrote the memoir of her father, Judge Edward St. Loe Livermore, which was read before this association when her husband was elected an honorary member in 1879. It was published in the second volume of our Contributions, and afterwards reprinted separately with additions.

means. Living as we have so long together, with nothing literally ever coming between us, my wife was absolutely a part of myself, and taking her away is wrenching away a part of my own soul. It is not the loss of a common woman — she inherited the robustness and strength of will and character of her father, the judge, and of her grandfather, the first senator from New Hampshire, combined with the tenderness and love she took from her mother — a rare meeting of qualities. I used often, in times long past, to say that if I should be called to my last account, half the bitterness of death would be taken from me by the consciousness that I left behind me one who would take care of the family better even than I could myself.

All this comes to me now that I have lost her, and I find the burden a very heavy one to bear. I again thank you for your feeling and sympathy. . . . Faithfully your friend.

J. G. Abbott.

From this time his face assumed a sadder, more abstracted look than before. Like Rabbi Samuel, son of Naomi, he could say, "Time can replace all things, but never the wife of my youth." He was a domestic man from the start, and grew more and more so to the end. It was not in courts of law, it was not in political activities, that he found his greatest happiness. It was in his own home, among his children and grandchildren, in his own fields covering four hundred acres, with his horses and his dogs, among the trees which he trimmed and the flowers which he planted with his own hands. Mr. Gladstone never took more delight in his home life at Hawarden Castle than Judge Abbott in his baronial hall at Wellesley Hills. If he did not enter into the public discussion of religious topics like Mr. Gladstone, he was as perfect a pattern of the domestic and social virtues as "the grand old man" himself.

He had completed seventy-six years and seven months, and seemed likely to continue to perform all his usual duties and enjoy his accustomed pleasures for ten

or fifteen years more, when the inevitable hour came, and he passed to the life beyond life. To the family and friends of such a man as Judge Abbott, however long delayed, death always comes too soon. But the sharp grief of love and friendship finds some alleviation in the contemplation of the true nobility which distinguished him through life, and in the beauty of the example which he has left to his posterity.

The Rev. Leighton Parks, rector of Emanuel Church, Boston, where for many years Judge Abbott attended public worship, writes: "I believe he was a man who tried to do justly, and to love mercy, and to walk humbly with his God."

Five of his sons, Fletcher Morton, Samuel Appleton Brown, Franklin Pierce, Grafton St. Loe, and Holker Welch, together with Mrs. Sarah Abbott Fay, his youngest daughter, widow of William P. Fay, survive him. There are also eight grandchildren, and it is not unlikely that this number may be increased, so that his race seems destined to a long continuance upon the earth. The recollections of Judge Abbott which survive him in the hearts of those who loved him, are more precious than words can express.

> "To live in hearts we leave behind
> Is not to die."

His Excellency William E. Russell, Governor of Massachusetts, being about to visit Lowell, was invited to be present at the meeting at which the preceding memoir was read. He returned his thanks for the invitation, and said: "Engagements that have already been made, and invitations already accepted, will prevent my attend-

ance. This is a great disappointment to me, as I should like exceedingly to join you in your tribute to the memory of one who was an able and much respected jurist and lawyer, and a distinguished citizen of our commonwealth."

Hon. Moses T. Stevens, Representative in Congress from the Lowell-Lawrence District, sent a letter, which was read, expressing his regret that other engagements compelled him, at the last moment, to deny himself the pleasure of listening to the able treatment of so good a subject as Judge Abbott, whose forefathers like his own, were among the first settlers of Andover, and for six generations inhabitants of that ancient town.

LETTER FROM SENATOR HOAR.

WORCESTER, MASS., September 17, 1891.

Hon. Charles Cowley, Lowell, Mass.

MY DEAR SIR—All my recollections of Judge Abbott are of an exceedingly pleasant character. I do not think I should speak of him as my contemporary at the bar, unless that word were used with a pretty comprehensive meaning. When I was a law student, from 1846 to 1849, I used to attend court in Concord a good deal, and was present at the trial of a good many cases where Judge Abbott was counsel. He was then one of the leaders of the very able bar of Middlesex County, having been out of college sixteen or seventeen years, and having come forward into leadership very rapidly. After I myself got well established in Worcester, I was opposed to Judge Abbott in several important cases. He impressed me with his great fairness and justice as well as with his great ability. I remember that he interposed his authority to compel a just settlement in several cases. In one of them, his client, a strong corporation, seemed disposed to do great injustice to a poor man, which I think would have been accomplished but for Judge Abbott's insisting on a reasonable settlement.

He was in the house of representatives for a single session only, if I remember right. The high reputation which he brought with

him to the house was shown by the fact that he was made one of the democratic members of the electoral commission. In that commission he stated the view of his party with great vigor and ability and with entire courtesy. It is unnecessary to say that that was a transaction which excited very deeply the feelings of the whole people of the country and especially of those who were called upon to take a conspicuous and responsible part in it. I do not think the kindly feeling toward Judge Abbott of his republican associates in Washington was interrupted by anything which occurred at that time.

I am, faithfully yours,

GEO. F. HOAR.

LETTER FROM GENERAL BUTLER.

AT HOME, November 22nd, 1891.

My Dear Mr. Conley:

I had the pleasure to receive your kind invitation to be present at the Old Residents' meeting of our city, which would have permitted me to pay my tribute of respect to the memory of the late Judge Josiah G. Abbott; but the condition of my health was such that its literal acceptance was impossible, but I take advantage of the occasion to say very imperfectly, a few words on that subject.

Judge Abbott and myself were, from 1839 to the end of his life, warm personal friends. He was my senior, but soon we came in contact with each other in the trial of causes as well before juries as in arguments before the Supreme Court, and I witnessed with care many of his efforts in other litigations. From actual personal knowledge I can bear testimony to his high talents as a lawyer, to his fidelity to his clients, his untiring and ardent advocacy of their cause, his uniform courtesy as a gentleman to his opponents in the court, to his honorable faithfulness to all engagements and understandings between counsel, and to his great success in his profession.

In 1855 he was appointed Justice of the Superior Court of the County of Suffolk, Boston, and acquitted himself in that position so as to bring to himself merit and distinction. He resigned that position because its salary was utterly inadequate to the labor and bore no comparison to the emolument of his profession which he resumed in that city.

He was an ardent democrat and received the honor of a seat in the house of representatives from that party so early that it was

almost doubtful whether he was not too young to serve. Soon after he was elected to the senate and served there with enviable distinction. He was appointed senior aide-de-camp to Governor Morton. He was candidate for congress, but being in a district with a large majority against his party his election was impossible.

When our unhappy war broke out in 1861, he remained truly and stanchly loyal to the country. I remember an incident on the seventeenth of April as I was going from Lowell to Boston to take command of the Massachusetts troops which were being sent to Washington. Judge Abbott met me in the same train of cars in the morning, and said: "Well, general, I hear that you are going to take command of our soldiers who go to Washington." I said: "Yes, judge; for want of a better." "Well," said he, "you will have with you poor soldiers in distress and suffering at some turn of affairs; let me contribute my mite to relieve that suffering." Putting his hand in his pocket he took out some bills and handed me one hundred dollars. I said: "Judge, you are very generous, but let me give you a memorandum of this." "No, no, Butler," he said: "we have lived too long together to need a memorandum in a matter of this sort between each other." I said: "Thanks, judge; I will see to it that your money shall reach its full destination."

Soon after he gave two of his sons to the war. I use this phrase for they were literally given to the country, as he lost them both on the battle-field serving with high honor. Thus he did his duty to his country at the same time retaining his political beliefs.

In 1874 he was elected to congress from one of the Boston districts. A new member of congress usually has to serve a term or two as an apprentice before he can attain any considerable prominence in the house, but Judge Abbott's high standing and abilities gave him instantly high position with his party, and when in 1876 the best talent and the highest legal ability of the house on the democratic side was to be selected to serve on that most important body, the electoral commission, having to deal with new and unprecedented questions, Abbott was selected with singular unanimity. He took the leading part in that commission. He was strongly impressed, to say the least, with the irregularities under which the local elections were held and especially in the states of Louisiana and Florida, which resulted in the claimed election of Hayes. The minority decided that a formal protest should be made to the country, against the decision of the majority, and Abbott was selected to prepare that protest, the work and performance of which required much legal

learning and the greatest talent in presentation of the arguments which must accompany it. He prepared the paper with his accustomed skill and ability. It was read before his associates and approved, but upon discussion the decision to make any protest was reconsidered, all agreeing, however, that if such protest was to be made the one just read was the very best presentation of the case. Political reasons bearing on the future of the party were the grounds of non-presentation upon which the decision was based. I have had the pleasure of examining Judge Abbott's paper with great interest. To analyze it so as to do it justice would be far beyond the limits of such a letter as I am now writing. It must suffice to say that it was worthy of Judge Abbott and equal to any efforts of his life, that is to say, it was done as well as it could be done and with singular and quite judicial impartiality.

I take leave to close by saying that a more honorable gentleman, a better or more loyal citizen or a more impartial judge has never lived than Judge Abbott, and a truer friend to myself I have not the misfortune to mourn. I am, very truly yours,

BENJ. F. BUTLER.

LETTER FROM FREDERICK F. AYER, ESQ.

NEW YORK, November 23, 1891.

My Dear Mr. Cowley:

I regret not being with you at the Old Residents' Association meeting to-morrow evening to join you in doing honor to the memory of Judge Abbott. While I feel that I could say much about him that would interest those who did not know him personally, I could impart but little to those who knew him well. To these he spoke while living, and told the story of what he was, with a compulsive eloquence which we who came after him can only echo back. I see you are going to read a paper on him. You knew him well. You will, with your delicate sense of appreciation and your accustomed eloquence, scatter his grave with flowers. They will be plucked from the garden of your knowledge of all men, varied and variegated; blossoms worthy of his exalted character and superabundant manliness and gifts. I knew him during the last fifteen years of his life very intimately. My relations with him were such as to carry me near to him; and he became confidential with me as men are wont to do but seldom with their fellows. Let me write a

word of his uncommon gift of greatness. His commanding talents were known to all. As the world advances, higher is the value placed upon that which a man *is*. Our admiration for mental traits and gifts, and the calisthenics of the intellect pales away, unless we discover some touch of greatness. Judge Abbott was superlatively great. Quick to make allowances for all men, he was a man without grievances. He seized upon that which was of value in men, discarding and forgetting the rest. He was all that nature intended him to be. How few there are that can *be* it! Many can act the utmost that is in them, without *being* it. To be is to act, while action, says Emerson, is only a trick of the senses. Judge Abbott was himself, wholly and always. He once told me he attended a school kept by Ralph Waldo Emerson. His description of Emerson as a school-master interested me most because I saw that Emerson had left his character on him in marks that would never wear away. He said Emerson never corrected, nor criticised, nor found fault with a boy, no matter what the boy had done; that only behind his wondrous smile, which almost concealed a faint expression of regret, could one read pages of what he would say, but never articulated. He said the worst boy in school was devoted to him. When some of the boys would become engaged in rough quarrels, he had seen Emerson appear at the door of the school-house with his heart in his face, and the boys would forget their quarrel in an instant.

So it was with Judge Abbott himself. He moulded others and made them also great. Above malice; above the trifling motives that mould so many, he grew to immense stature, and died as he lived, with his eyes ever on the horizon and toward the rising sun.

Very truly yours, FREDK. F. AYER.

LETTER FROM HON. DANIEL SAUNDERS.

My father, Daniel Saunders, as early as 1830, became aware of the water power between Lowell and the present site of Lawrence, although the fall between the two places was so gradual that a boat could be rowed the whole way.

Judge Abbott, who was a nephew of my father, was consulted by him long before any positive steps were taken towards starting the enterprise which resulted in building the city of Lawrence. Most of the early legal work was performed by Mr. Abbott; and in obtaining bonds he was frequently consulted, and his good judgment

and legal attainments were of great value in obtaining good titles to the present site of Lawrence. So good was his advice that no title obtained has ever been successfully contested.

I am at the present moment unable to give you the number of farms purchased, but the whole territory purchased embraces about three square miles. Thirty or forty dollars an acre would have been a large price for most of this land, which is now worth from ten cents to four dollars per square foot.

Judge Abbott has been more or less connected with the corporations of Lawrence as a stockholder, and for many years was a director and president of the Atlantic Cotton Mills, and he has always taken great interest in the manufacturing enterprises of New England, being a large holder of stock in various corporations, as a director and president of one or more of such corporations in Lewiston, Me.

Of his standing as a lawyer, his integrity as a man, and his position as a citizen, I need not speak. They are known to all who ever knew him by acquaintance or reputation.

LETTER FROM HON. BENJAMIN DEAN.

I studied law in the office of Hon. Thomas Hopkinson, afterwards Judge of the Court of Common Pleas, and President of the Boston and Worcester Railroad.

Mr. Abbott and B. R. Curtis, afterwards Justice of the United States Supreme Court, tried a case at East Cambridge, and I expressed to Mr. Hopkinson the general sentiment, even of that day, of the great ability of Mr. Curtis. Mr. Hopkinson said that, as he was going down the steps of the court house, somebody else made a similar remark, when a member of the jury that was not trying the case said, "I like the tall one the best;" meaning Mr. Abbott. I have often since then "liked the tall one the best."

Though I have always been a great admirer of Judge Curtis, I have again and again been struck with the great fervor and vigor of Judge Abbott's jury arguments. He seemed to be glad when the evidence was closed, as if when he came to the argument, he was conscious of being master of the situation. I never knew him to make a poor argument. He always warmed up and went on like a rushing torrent.

The bar of Middlesex was of conspicuous ability—Judge Abbott,

General Butler, E. Rockwood Hoar, Thomas Hopkinson, Daniel S. Richardson, Judge Nelson, G. A. Somerby and others, had to be such to compete with each other. They were, besides, followers of others older than themselves, who struggled to retain their lessening ascendency. I will not yield to the temptation to speak of them, however deserving they may be.

When Mr. Abbott was appointed to the bench, he had his office with me in Boston, and we ever after had our offices together, and we continued close friends to the time of his death.

You will not expect me to speak of his judicial or public career. It is known to everybody, and I have no especial knowledge of it. I will, however, mention one incident of the former: Coming into the office after the adjournment of the court, he said, there was brought before him a little boy for sentence, and he said to the district attorney, "You don't expect me to sentence that boy. *I* shall never sentence him. You must make some other disposition of his case;" then he added, "I was not going to sentence a little boy like that."

The professional and public career of Judge Abbott is so well known, that features of his personal character and habits will be quite as interesting to his old townsmen. He was very fond of the gentle art of fishing, and we scoured the ponds of Middlesex and Plymouth Counties. Sometimes in Middlesex County, Alden Buttrick and Hapgood Wright were with us: but generally, and always in Plymouth County, we were alone.

He lived on Stackpole Street and I on Alder Street, in Lowell, and ofter one o'clock in the morning whichever awoke first would rattle his fish-pole against the other's window, and we would walk to Raymond Kimball's stable, ride to the Ridge Tavern in Groton, and put up the horse. "Peter" would then take us in a wagon to Knop's Pond, where we would begin our sport. "Peter" came for us at meal times, and the evening would see us on our way home. We became very expert, and we never failed of a handsome catch of pickerel. Once Wm. G. Russell invited us to join him and others at a pond in Plymouth, where we had a memorable time. A gentleman from New York named Cleveland had, the year before, caught a seven pound pickerel, and became the "King Fisher." On this occasion I was favored of fortune and caught the two largest pickerel, one weighing eight and the other five pounds. These were the finest fish, of the kind, I ever saw — very large ones for this region. The judge pronounced them "sockdolagers." I once, when with

Hapgood Wright, caught one in Springy Pond, in Groton, weighing four pounds and two ounces. Mr. Noah F. Gates told me that he saw a large one lying in the shoal water of the wooden wasteway of a mill in Concord; that he got a pitchfork and speared it through the head against the wood underneath; that he gave it to Steadman Buttrick of Concord, then county treasurer, and he carried it about showing it to his friends in town. On opening it a pound pickerel was found, which Mr Gates had pushed down the big one's throat, and in that one another smaller one; and so he had to go the rounds of his friends and neighbors once more. We used to fish all day, contending for the greatest catch. Each of us had a style of fishing. In some ponds with some kinds of water and weeds, he could always lead, while I held my own in others.

No one who saw Judge Abbott in the latter part of his life, walking with a rather sad expression of countenance, would think of him as fishing in the ponds of Middlesex County and helping to draw skiffs from one pond to another. We sometimes fished through the ice. He told me that on one occasion almost immediately after casting the lines through the ice of Muddy Pond, General Stark caught a five pound pickerel. He wound up his line saying, "I have done my fishing for this day." There was not much luck on the part of anybody after that.

Judge Abbott was the best of company, energetic and vivacious all the day long. Though nervous and apparently excitable, he was patient in listening to others and entered into their feelings, hopes and fears.

He was an indefatigable and rapid worker. He had none of that tendency which is the bane of lawyers generally, to delay and postpone things. He rather push his business than let his business push him. He was always closing up his cases and reaping the results. This was one cause of his great success.

I have alluded to Judge Abbott's method of arguing cases. Many times I have thought of his coming within this description of Milton by Macaulay:

"It is when Milton escapes from the shackles of his dialogue, when he is discharged from the labor of uniting two incongruous styles, when he is at liberty to indulge his choral raptures without reserve, that he rises above himself. Then, like his own good genius bursting from the earthly form and weeds of Thyrsis, he stands forth in celestial freedom and beauty; he seems to cry exultingly:

'Now my task is smoothly done,
I can fly or I can run,'

to skim the earth, to soar above the clouds, to bathe in the Elysian dew of the rainbow, and to inhale the balmy smells of nard and cassia, which the musky winds of the zephyr scatter through the cedared alleys of the Hesperides."

You will not understand me, as making this in all respects applicable to Judge Abbott. He never wrote poetry; never quoted poetry; never quoted anything, though an omnivorous reader. He never aspired to elegance of diction. He always seemed to feel that when he came to his argument, he was master of the situation. He was eager to have the evidence closed. He always had his theory of the case, and towards the close of the evidence was anxious lest something should interfere with it. As he saw his case clear, he was eager to be freed from the shackles of further evidence, and was on tiptoe for the argument. Then he seemed to burst all barriers and rush forward as if there were no doubt about anything he said.

I said that he never quoted anything. He did once and I have remembered it as the only instance within my knowledge. He and General Butler were trying a case in which some of the witnesses came from a place called Shabbakin, and while the evidence was going in, Judge Abbott alluded to Shabbakin in no complimentary terms. General Butler in his argument said "that notwithstanding Judge Abbott's allusion to Shabbakin, it appeared that he took his pleasure rides through that place." To which Judge Abbott replied, "that in Bunyan's Pilgrim's Progress, Christian had to travel through the 'Valley of the Shadow of Death,' so he rode through Shabbakin to the pleasant plains of Littletown where a portion of his family were sojourning." (There were Littletown men on the jury.)

LETTER FROM JOSEPH H. TYLER, ESQ.

I entered the office of Abbott & Brown in September, 1851, and continued there most of the time till I was admitted to the bar, on Mr. Abbott's motion, at the April term, 1853, of the Supreme Judicial Court. I saw much less of Mr. Abbott than of Mr. Brown, for the reason that Mr. Brown was constantly in the office, while Mr. Abbott, during the sessions of the courts, was almost constantly in court, and made only flying visits to the office. When the courts were not in session he was there more, but then not so regularly nor for so long a time as Mr. Brown Mr. Abbott tried all the cases and Mr. Brown prepared them, or more particularly the law. Mr. Abbott also tried a great many cases as senior counsel for other lawyers, who of

course, mainly prepared their own cases. "There were giants in those days" at the Middlesex bar. There was George F. Farley, much Judge Abbott's senior, who had won a great reputation in trying cases; Albert H. Nelson, with a voice and grace of manner almost equal to those of Edward Everett, who became chief justice of the Superior Court for Suffolk county, of which Mr. Abbott was an associate; Tappan Wentworth, an indefatigable fighter; Benjamin F. Butler, who then had a reputation for wonderful ability, whose fame has since become national, and who is a genius beyond dispute; Charles R. Train, bright and easy-going, but never probably putting forth all his power; G. A. Somerby, with marvellous powers of endurance and marked ability in trying cases before a jury; Daniel S. Richardson, scholarly, a good lawyer, and with the dangerous power for an opponent of making juries believe that he was honest and told them the truth; Theodore H. Sweetser, not then so eminent as a lawyer as he subsequently became, who, for pure logic and clear statement, was unsurpassed by any of his associates; Judge E. R. Hoar, eminent then and more eminent since as a lawyer, had been of this bar, but went early upon the bench; and, finally, there was John Q. A. Griffin, younger than the others, my own playmate and schoolmate in boyhood, a student of Mr. Farley, who, immediately upon his admission to the bar, went to the front rank, an exceedingly bright and ready man, whose tongue was a Damascus blade cutting to the very quick, with wit, satire and sarcasm, a somewhat dangerous power, and whose pen was often used in writing most trenchant articles for the press.

When I say that Judge Abbott was the peer of these men, and the superior of most of them, I claim for him very high ability as a lawyer and advocate. The Middlesex bar when these men were its conspicuous members, was noted for the ability, thoroughness and sharpness with which they tried their cases. Burke says "He that wrestles with us strengthens our nerves and sharpens our skill. Our antagonist is our helper." What helpers were such men to each other! Here was a school of intellectual athletes. Strength, alertness, labor, vigilance and persistence were necessary, against such, for success. Judge Abbott had a more nervous temperament than most of them, but his head was always clear, even though his nerves were at their utmost tension. He threw himself into his cases and tried them to win. He could not save himself if he would, and he would not if he could. When he began the trial of a case, his whole power, mental and physical, was put into it. His arguments were

impassioned and impetuous. A sick headache was the usual sequel. . . . . He once said to me that he should not know how to practise law without Mr. Brown. They supplemented each other. It is said that some of the happiest matrimonial unions are formed by people who are opposites in taste and temperament. Mr. Abbott and Mr. Brown were certainly opposites in every sense. Mr. Abbott was content in the court room, while Mr. Brown would have been wild with uneasiness. Mr. Brown was content in the office, while its duties would have been irksome to Mr. Abbott. Mr. Abbott was bold, confident and aggressive, while Mr. Brown was timid, cautious and hesitating. Mr. Abbott was no doubter, while Mr. Brown was full of doubts. Mr. Brown labored hard and long to reach his conclusions, while Mr. Abbott's conclusions might be termed intuitious. Mr. Brown had more knowledge of law books and Mr. Abbott of men. Mr. Brown in the preparation of cases looked not only on his own side but on that of the other, and probably, many times, thought of points against himself that never dawned on his opponent. In this way he was of great service to Mr. Abbott, who was thus put on his guard. Many, however, of these ghosts of Mr. Brown's fears would down before Mr. Abbott's quick common sense.*

Prentiss Webster, Esq., son of the late William P. Webster, and successor of his father as law partner of General Butler, then read the following paper:

Mr. President and Gentlemen — It is my first duty to thank you for your kind invitation to be present with you this evening, and to join in honoring the memory of Judge Abbott.

Many of you gentlemen knew Judge Abbott in his boyhood days; were with him in his development to man's estate; saw him when he embarked on his career for life; watched his mental growth; followed him into public and private life to learn his value as a citizen, a friend and a counsellor, and to judge of his ability, learning and fidelity to his trusts.

* Lowell Daily Courier, Dec. 29, 1891.

It would be presumptious on my part to attempt a surmise of the impressions he made upon your minds; of these it is for you to tell and not for me. Yet I feel I but echo your memories when I say that —

> "He above the rest
> In shape and gesture proudly eminent
> Stood like a tower."

I can only bear witness to the impressions made by him on one of a succeeding generation, and these came to me when in his latter days he had left your midst and made his home elsewhere — alas! not without pain and sorrow and kindly thoughts for those he had left behind.

For the City of Lowell he always held the kindest of memories. To its citizens, his friends and neighbors of former years, he ever turned with wishes for them of long life and happiness. He was solicitous for the welfare of the city, kept apace with our growth and an interest in our affairs.

During the past ten years it was my good fortune to see much of Judge Abbott, both in and out of court, having been interested with him in causes common to his own office and that of his life-long friend, General Butler. This brought me to him often many times each week, and when with him and work ended, he would turn to his early days in Lowell, replete with remarks on the many changes which had taken place. He loved to talk of his early associates at the bar; of his former friends and acquaintances; often making an inquiry for this man and for that man, whom he had favorably known in early years. From persons he would pass to things and tell of what building was formerly here and what building was there; who lived in one place and who in another; each and every conversation being of particular interest, because of the information he im-

parted and the seeming pleasure he had in talking of our city and its inhabitants.

With delight he looked back upon the continuous labor of days and nights spent in the preparation and trial of causes at Concord and old Cambridge. For those who preceded him he had a great admiration, and as they gradually gave up active work, their places were ably filled by Judge Abbott and others well known to you older citizens of Lowell. To call the roll of the practitioners of that time would be to call Judge Abbott among the first, a position which he took and creditably maintained among his later associates in Suffolk County. Reminiscences of those days as told by him, were most interesting, replete with happenings which would to-day astonish judges, attorneys and the public. He compared the practice at old Concord with a happy family, where the relations between judge, attorney and juror were most intimate, living together with one object in view, to wind up the business of the court with a care that a proper meed of justice was bestowed upon the litigants, for which each and every attorney struggled hard to get a goodly share for his particular client.

Judge Abbott's varied experience taught him to appreciate the struggles of his younger associates. To them he had nothing but words of encouragement; for them he was ever ready with acts of kindness, and from them he never denied his sound advice, that success at the bar could only be had by hard, hard work, devotion to the books, exercise of perceptive faculties, a steady outlook and scrutiny of every day occurences in life, coupled with an understanding of the lessons taught from public practice in the courts. Such had been his own life, and his example in itself was wisdom, to say nothing of impress made by contact with him.

He encouraged young men not to falter in their work before the criticisms of the public on the lawyer: for to him in every walk in life they were sure to come when thrown into troubles with their neighbors, whether on personal wrongs or wrongs done to their property.

He was not inclined to harshness toward his younger opponents; his rebukes would be conciliatory and well advised rather than critical; he abstained from doing any injury to their feeling unless he felt sure that there was an attempt to trick him, and then his manner would change; though not often in open court, yet certainly in private he would take pains to bestow his kindly admonitions well laden with sound advice.

Judge Abbott invariably treated his younger associates, who were with him in the same case, with marked consideration. He would carefully listen to their preparations before going into court, and when there would never place them in an embarassing position, but was ever on the alert to come to their aid when by force of circumstances his junior, through his own error, or the subtleties of their opponents, went beyond his depth. By way of encouragement he would put upon his junior associates all the burden of the fight that could be properly entrusted to him without injury to his client's cause. His purpose was evidently to teach him to stand alone and gain confidence in himself.

His noble form and dignified demeanor will be greatly missed from among them, and by you also, gentlemen of the Old Residents' Association, who are gathered together here this evening out of affection and regard for his memory; and you should not forget that

> "Your kindly act is a kernal sown
> That will grow to a goodly tree,
> Shedding its fruit when time has flown
> Down the gulf of eternity."

PROCEEDINGS OF THE BAR

— OF —

THE COUNTY OF MIDDLESEX.

PURSUANT to notice previously published in Boston and Lowell newspapers, the Bar of Middlesex held a meeting in the County Court House at Lowell to take steps to pay a suitable tribute to Judge Abbott's memory. The meeting was held on the fifth of April, 1892, and was well attended. Mr. Cowley, the senior counsellor present, called the meeting to order, and said: —

Brethren of the Bar: —

It would be a strange disregard of many approved precedents, if the Bar of the historic County of Middlesex, in which the late Josiah Gardner Abbott was born and bred, in which he first wore the robes of an honorable profession, in which he continued to practice more or less until his death, and to which, by his high reputation as a lawyer, a judge, a statesman, a patriot, and the father of heroes and martyrs, he imparted increased renown, should give no formal expression of their appreciation of the loss which has been sustained by the Commonwealth by his death. The very walls of this court-house, which so often resounded with the echoes of his eloquent appeals to juries in years gone by, would rebuke such a disregard of ancient and approved custom, suggesting to our minds, if not sounding in our ears, the old exclamation, "Wist ye not that a prince, nay, a great man, has fallen down in Israel?"

The name of Judge Abbott is so enshrined in the memory of his coevals, both within and without the Bar, that there is no danger that it will be forgotten. The Old Residents' Historical Association

has already held a memorial meeting in his honor. Public journals have shown a generous appreciation of his character; and you, his professional brethren, have met here and now for the purpose of considering how you will express your sense of his worth and of the public loss. It seems desirable that some organization of this meeting should first be made. Is it your pleasure to choose a chairman?

George F. Lawton, Esq., was chosen, and upon taking the chair said: —

Brethren of the Middlesex Bar: —

I thank you for the honor conferred upon me. Nearly all of us who meet here to-day were admitted to practice at this Bar after Judge Abbott removed from Lowell and from this county. But it is not presumptuous for us to claim a share in his great name and fame for old Middlesex. It is a duty that some memorial of him should be preserved with us, that some formal notice of his death should be taken by us.

He lived in Lowell when he was called to the Bar. All the early part of his honorable career was here in Lowell. Those who remember Lowell at all in those days, will remember his stately form upon our streets. His stature, his figure, his face, his majestic mien, raised him as far above others as did his great abilities and his high character exalt him above ordinary men.

He was of old New England stock. Doubtless much of it was yoeman stock. But where in the world have there been such yoemen as in old Massachusetts in the last two hundred years? Those who are versed in his genealogy will perhaps be able to account for his great superiority by tracing his ancestry to a superior source. Of whatever blood he may have been, he was worthy to have sprung from kings. At all events he was noble, and by a better title than an inherited one. He was one of Nature's noblemen.

Is it your purpose to complete the organization of this meeting by choosing a secretary?

Harry A. Brown, Esq., son of Samuel Appleton Brown, for many years the law-partner of Mr. Abbott, was chosen as secretary, after which several members of the Bar spoke substantially as follows:

REMARKS OF HON. F. T. GREENHALGE.

Mr. Chairman: —

It is eminently fitting that this Bar should participate in a tribute to Judge Abbott. He is identified with the best work of Lowell in its early and palmy days, and after he had gone to live in Boston, he continued to take a warm and affectionate interest in Lowell. He had spent many happy years here and the graves of his two heroic sons are here. I can give out of my own personal experience an illustration of the interest he took in Lowell citizens. I was arguing a case before the full bench, as City Solicitor of Lowell — it was the case of Chase *v.* Lowell — Judge Abbott was present, and he appeared to give earnest attention to the argument. A day or two afterwards I received a most kindly letter from him saying how much he had been interested in the case, complimenting me very pleasantly upon my part in it, and asking me to dine with the Law Club, which was to meet at his house. And a most delightful dinner it was, and most delightful company, and delightful courtesy to myself, especially from my host. His stateliness had nothing frigid about it, his courtesy nothing of condescension. His affability was marked by dignity and by sincerity. And as I have said, he seemed always eager to notice Lowell men and never lost his interest in Lowell affairs. Many members of the Bar here present can testify to the genial and noble traits of which I speak.

REMARKS OF JOHN MARREN, ESQ.

Mr. Chairman: —

I was born and brought up in Lowell, and from my earliest childhood I knew Colonel J. G. Abbott (for that was the title he bore when I was a boy, and when he was on Governor Morton's staff), and I always admired that commanding figure, that frank open face, that full voice, and that earnest manner of speaking, by which he moved and led many a public assembly. I was one of those who, though compelled by force of circumstances to earn a living by working in the factories, felt strong intellectual cravings which could not be satisfied except by books and study. I became a member of the Mathew Institute, a society composed of the cream of the sons of the Irish immigrants in Lowell, devoted to mutual improvement. About the year 1850, I had a particular friend in that society who was studying law in the office of Abbott & Brown, and

who was afterwards on General Butler's staff — Captain Peter Haggerty, who died at New Orleans during the war. As I often called on Haggerty at that office, I became acquainted with Colonel Abbott and his law-partner, Samuel A. Brown. At first, Colonel Abbott seemed cold and distant, too aristocratic to waste his time in talking to me. But as soon as he found that I was earnestly trying to learn the true merits of questions that came up for discussion, I got his sympathy at once, and he often aided me, as well as Haggerty, with facts and suggestions.

I shared in the excitement of the agitation for the ten-hour law, and it was my delight to address the workingmen of Lowell in behalf of that measure, and there were two or three occasions when, through Colonel Abbott's influence, I got invitations to speak at public meetings of the Democracy. The names of Abbott and Butler were on all men's tongues as local leaders of the Democratic party, and of the Coalition, which elected George S. Boutwell as Governor and Charles Sumner as United States Senator, and cleared the way for many reforms.

Judge Abbott was a true leader of the Democratic party, and I followed him with the same zeal with which the old Scottish clansmen followed Roderick Dhu. They swore by their chieftain's hat, and I swore by Colonel Abbott's polished beaver. In 1878, the year of the great split in the Democratic party, I was one of those who voted for Abbott for governor. That year the candidates of all the political parties for governor were, or had been, Lowell men — Abbott and Butler, the Democratic candidates; A. A. Miner, the Prohibitionist, and Thomas Talbot, the Republican, who beat them all. I knew Judge Abbott did not want the office, and that his only object in allowing the use of his name, was the preservation of the integrity of the party.

Judge Abbott's sympathies were always on the side of the oppressed, no matter what might be the form of the oppression. Who can forget his eloquent words in Boston in favor of Home Rule for old Ireland? Who can forget the eloquent appeal for the Union which he made in front of the Merrimac House after the attack was made on Fort Sumter? It was perfectly electrical. Since the war I have often met him at conventions, and he always inquired kindly after those whom he had known as boys in Lowell, and he was always glad to hear of any success that they had won. He gave me credit for showing good pluck in political contests, and I was very glad to have his encouragement. I never had a truer friend.

The following-named gentlemen were chosen a committee to prepare suitable resolutions or a memorial of Judge Abbott: Hon. E. R. Hoar, of Concord; Hon. F. T. Greenhalge, of Lowell; James T. Joslin, Esq., of Hudson; Hon. J. N. Marshall, of Lowell, and Charles J. McIntire, Esq., of Cambridge.

The meeting then adjourned subject to the call of the chairman and secretary, and was re-assembled by them in the County Court House, at East Cambridge, on the seventh of June, 1892.

Judge Hoar, the chairman of the committee above named, being too infirm in health to attend to the duty assigned to him, wrote to Mr. Greenhalge as follows: —

Dear Sir: —

By a letter from H. A. Brown, Esq., I am notified that my name is on the committee appointed by the Middlesex Bar to prepare and present resolutions to the Court in relation to the death of Hon. Josiah G. Abbott. I regretted very much that the state of my health would not even allow me to be present at Judge Abbott's funeral, as I had great respect for his ability as a lawyer, especially as an advocate; and I am sorry to say that it is wholly out of my power to accept the duty imposed by the vote of the Association. As you are the next in order in the list of the committee which was sent to me, I suppose it is proper that the notice of my inability to serve should be sent to you.

Very respectfully and truly yours,

E. R. Hoar.

Accordingly, Mr. Greenhalge acted as chairman of that committee, and, in its behalf, at the adjourned meeting presented the following memorial, which was unanimously adopted, and Mr. Greenhalge was requested to present the same, forthwith, to the Superior Court. The Bar meeting then dissolved.

The Superior Court was then opened by Judge James B. Richardson, and Mr. Greenhalge presented the following

MEMORIAL :

Josiah Gardner Abbott was born at Chelmsford, in the County of Middlesex, Nov. 1, 1814. He graduated at Harvard College in 1832, and was admitted to the bar in 1837. He soon rose to prominence in his profession, and the sphere of his labors was greatly enlarged. In 1855 he was appointed Judge of the Superior Court for the County of Suffolk. This position he resigned Jan. 1, 1858, at once resuming the practice of his profession. He held important political offices. He was a member of the House of Representatives of Massachusetts in 1837, and a senator in 1842 and 1843. He was a delegate to the Constitutional Convention in 1853. He was elected to the national House of Representatives in 1874, and was chosen a member of the Electoral Commission in 1877. He was president of the Boston & Lowell Railroad Company, of several manufacturing companies, and director in many others; he had a large share in building up or developing Lowell, Lawrence, and Lewiston. His labors at the Bar did not cease until his death, which occurred July 2, 1891. Such are the bare lines of a great, useful, and honorable career — of

> "A life in civic action warm —
> A soul on highest mission sent;
> A potent voice in parliament —
> A pillar steadfast in the storm."

The life, character, and services of Judge Abbott are worthy of commemoration by the legal profession; and such a commemoration cannot fail to be productive of solid benefit to the Bench and to the Bar. There is, too, a propriety in such a proceeding by the Middlesex Bar. Judge Abbott, it is true, was a leader and an ornament to the Bar of Suffolk County, and latterly his home, and in a large degree, his practice, was in that county. But the pillar of his fame was reared in Middlesex, and it cannot be thence removed, any more than the memorial column on Bunker Hill. He was a stately and commanding figure at this Bar at a time when its members were pre-eminently distinguished for learning, for probity and power.

He was a faithful and devoted student of the law. He took a large and reverent view of his professional obligations, whether to the Bench, to his brethren of the Bar, or to his client. He had a high, delicate, almost fastidious sense of honor, in these various relations of the man of law. His work and influence could not but raise the tone of the profession. His services on the bench main-

tained and enhanced the reputation of the Massachusetts judiciary; at the Bar he proved what noble triumphs might illustrate the functions of the advocate, and what rich results might crown the patient labors of the counsellor. In spite of vulgar animadversion, the profession of the law is one of the most trusted guilds among mankind, and Judge Abbott's life exemplified the fullest trust and confidence which a community could give to a member of that profession.

And in the best and highest sense, he was prominent in political life. It is natural, and in many cases inevitable, that the functions of the lawyer should gradually expand into the political sphere. In the constitution of modern society, the labor of the lawyer is everywhere demanded, and everywhere found. The peace of families and the peace of states alike depend upon the arduous and responsible work of the lawyer. And, as at the Bar and upon the Bench, Judge Abbott was always "to true occasion true," so too in political action he was faithful and firm. He was pre-eminently a man for a crisis. This is proved by many points in his career, notably in 1861 and 1877. In such times of tremendous import, he never hesitated or faltered. He loved his party; but he loved his country more; and though in the supreme hour a hostile party held his country's standard, he was among the first to range himself with his noble sons under that standard. On the altar of his country he offered up with the firmness of a Roman father the children he loved with more than Roman tenderness. He rose to the height of the second great crisis in the nation in 1877; and again, the measure of the occasion was not beyond the measure of the man. His sound judgment, trained and sharpened in his early conflicts with the giants of the Middlesex Bar, strengthened and broadened by his judicial experience, combined with all the fervid loyalty of his nature, led him to prefer before every other object, the peace and safety of his country.

Judge Abbott stands before the community as the type of the lawyer, zealous and able in all the duties of the citizen, devoted to his profession, to his family, and to his country.

REMARKS OF JAMES T. JOSLIN, ESQ., OF HUDSON.

May it please the Court:

I rise to second the resolutions presented by the committee. This is not a heartless formality. The subject of this memorial was a gentleman who appreciated the office and power of friendship and the attachments which he formed were of an enduring character.

To those of us who came to the Bar when Judge Abbott was at the height of his professional success, and who have been somewhat intimately associated with him for the past thirty years, the impressions which his typical personality made will not be easily effaced.

Early in my practice I had occasion to call Judge Abbott as senior counsel in the trial of important causes. From the first, I am sure I had his confidence and respect. It was a pleasure to be associated with him, so gracious and cordial was his demeanor, and so ready and willing was he to impart from his vast store of legal knowledge any information to remove a doubt or indicate the correct line of practice in a given case. He always had the carriage and bearing of a gentleman, and to those not acquainted with the man he might at times appear haughty and reserved. He was not obsequious. He was no flatterer, and he did not go where he was not welcome unless duty called.

To those, however, who desired to advance, to those who had an inspiration to rise, to the younger members of the legal profession especially who were struggling amid difficulty and doubt, Judge Abbott was peculiarly kind and helpful. He had travelled the way himself and he knew the hard and trying passes as well as the dangers and pitfalls. The greatness of mind and the goodness of heart in him were exemplified in that he never treated with levity the simplest question that the novice presented. Although it might, perchance, be elemental or border on the simple, the inquirer's difficulty was seriously and candidly considered, and not unlikely would lead to a full and complete discussion of a number of cognate principles, thus making the way clear and luminous to the querist, beside filling his heart with gratitude for his friend and benefactor. It was this trait in Judge Abbott, I am sure, quite as much as any other, that caused the younger members of the profession to admire and respect him. They felt, and they had reason to feel, that Judge Abbott was their friend and helper. They could go to him as to a friend with the assurance that they would receive a friend's welcome, and departing carry with them a friend's benediction. Hence the meetings which were formal or occasional, between junior and senior, gradually grew into friendships which were mutually agreeable and lasting.

Some of us recall the fact that two years ago at the opening of the June term of this Court our departed friend was present, and in an adjoining room held our closest attention for a half hour while he narrated many reminiscences of his early and later practice in this county. We were pleased that the weight of years apparently was

hanging lightly upon him. It was the last, however, of such meetings here. In a few short months the summons came which called him to other scenes and higher service.

The first twenty years of Judge Abbott's professional life were spent in this county with his office at Lowell. During that period he acquired distinction and eminence as a sound lawyer. His contemporaries were men of ability, and many of them attained preferment with himself. Hopkinson became a judge of the Common Pleas. Nelson was elevated to the Superior Court Bench in Boston. Ames became Chief Justice of the Superior Court of the state, and afterward was elevated to the Supreme Judicial Court. Gardner also secured a position on both the Superior and Supreme Judicial Court Benches. Train became Attorney-General, and General Butler has attained greater and wider distinction than any. Wentworth, Worcester, Farley, Sweetser, Richardson, Griffin, and others remained loyal to their profession and became celebrated. It was with and among such men as these that Abbott commenced, grew and excelled. He survived most of them and was the equal of any.

During the last thirty-five years of his life he made Boston his headquarters, but Middlesex never surrendered him and he never ignored Middlesex. He belonged to the state and made his influence felt in Congress and in the Federal Courts. His life was exceptional. As a lad he was precocious. His education was thorough and early secured. At the advent of his majority he stepped into the arena of professional and public life. For more than half a century thereafter he discharged its manifold duties with fidelity, efficiency, and honor. As citizen, lawyer, jurist, statesman, and scholar his fame is secure. The Bar has lost, in the death of Judge Abbott, one of its ablest and truest representatives. We may well pause to commemorate such a life and speak a word of eulogy over the departed; nevertheless, it is not in the spirit of sadness that we think and speak of the life of our friend, replete with noble deeds and heroic acts, for

"He is not dead, but gone before."

REMARKS OF CAUSTEN BROWNE, ESQ.

May it please the Court:—

It is well that this commemoration should be in the hands of those among whom our Brother Abbott passed the earlier part of his professional life and laid the foundation of his professional distinction. It is well also, and a most gracious act of hospitality on the part

of the managing committee, that representatives of the Suffolk Bar, who enjoyed his companionship in later years, and honored and loved him to the end, should be invited to meet here with his Middlesex friends and bear their part in this public expression of the high esteem in which he was held by his professional brethren. But I should do myself injustice if I did not claim the right to stand among the nearest of the friends of a man who was so true and valued a friend to me. It is a pleasure to be here and to express, although briefly and most inadequately, my sense of the loss we have all suffered by his death.

My acquaintance with him commenced after he had retired from the Bench and established himself at Boston, being then in the very prime of his strong, brave, high-spirited, warm-hearted, strenuous manhood. As time went on, our acquaintance grew more intimate, until within the last ten years I think I may fairly claim to have enjoyed his personal friendship, and I can truly say that during those years my respect and affection for him steadily increased. I value much the memory of those last few years when I felt most assured of his friendship for me and therefore most thoroughly and most honestly enjoyed his society. As they passed on and he approached the evening of life, it seemed to me that the strong and simple outlines of his character stood out more and more distinctly and impressively like towers against a western sky.

I am, as you see, not disposed now to dwell upon his professional capacity and accomplishments. I gladly confirm from my own observation what others have said here as to these. His ardent and impressive advocacy, his strong grasp of legal principles, his power of wise practical counsel, his quick and healthy ethical sense, without which the best of advocacy or of counsel cannot be attained — all these and more I remember, as you do, with admiration and with pride. But what is uppermost in my thoughts is the force, elevation, and purity of character which inspired, sustained, and guided his professional life. Everything else about it seems to me at this moment to fall into a secondary place. I should be ashamed for myself and for my brethren to have to say that this distinction of our Brother Abbott was a rare one among us, but it is not given to all to have our quality tried by such a career as his. We cannot but feel proud for the sake of the brotherhood that the record of his professional life was a record not only of the strenuous devotion of superior faculties to worthy purposes, but of stainless honor, of magnanimity, generosity, courtesy — all those fine traits of personal

conduct which keep the atmosphere of the Bar clean and wholesome and fit for a gentleman to pass his life in.

He was a true knight. As I picture him now in my mind's eye, with his grave earnestness, his unassuming dignity, his ready and hearty friendliness with his equals, his kindliness towards the young, the weak, and the distressed, it does not seem to me extravagant — at least it suits my own feelings so well to do so, that I shall not hesitate — to quote and apply to him some of the words from the Lament for Sir Launcelot: "Thou wert the courtliest man that ever bare shield; and thou wert the kindest man that ever strake with sword; and thou wert the goodliest person that ever came among press of knights; and the gentlest that ever ate in hall among ladies; and thou wert the sternest knight to thy mortal foe that ever put spear in rest."

It is just this chivalrous combination of the strong arm and dauntless spirit with tenderness of heart, loyalty to friends, sincerity, dignity, courtesy, that was so charming in his friendship and is now so enduring in his memory. He had a lofty and imperious spirit, and a fine capacity of indignation at all mean, small, and indirect conduct. But this, I think, was quite unmixed with anything like arrogance. He was a proud man, but it was genuine pride. It was the gold coin of self-respect, not the baser substitute of self-esteem. His nervous organization was extremely sensitive. He could not but have felt keenly — no man more so — any personal wrong or indignity, and yet I believe — I know — that he was placable and forgiving. Vindictiveness was, of course, far beneath a man of his quality. He was too proud as well as too generous for that.

Let me, in passing, touch on one other point, his rare refinement of feeling. I think it worth while to note that the conversation of a man of such ardent temperament and such bold and self-reliant habit of mind, was free from all stain of immodesty or irreverence. His conversation, like his deportment, was that of a gentleman.

It would be a very unfair view of his character which did not take account of the fact that he was a man of *fixed ideas*. Those who like may call it narrowness or prejudice. His judgment on questions of right were deeply rooted and stubbornly held. He did not care to discuss them at all. For him certain moral propositions were immovably settled. Now this is not now-a-days a popular type of man. We live in times when it is almost set up as a test of intelligence that a man should hold all his opinions subject to reconsideration, shall accept all truth "without prejudice." The most liberal

and enlightened man is considered to be he who holds his convictions most loosely, and is readiest to surrender them on newly discovered evidence. There are some of us that think this to be an unhealthy intellectual climate to live in. Our Brother Abbott thoroughly distrusted and disliked it. He never incurred the woe denounced against those who "put bitter for sweet and sweet for bitter, who put darkness for light and light for darkness." He had none of the *fin de siecle* spirit about him. He was indeed at heart and in his personal life, a conservative of the conservatives, holding it to be true, as a general rule, that the "old is better."

We have all, I think, a feeling that in his death we have lost a power and an influence among us not easily to be spared; a power and an influence tending always to the maintenance of the simplest, and therefore the highest, standards of integrity and honor. It is such a character as his that lives longest, and most deserves to live, in the affectionate memory of men.

REMARKS OF HON. FREDERICK O. PRINCE.

May it please the Court: —

I, also, am glad that I am permitted to say a few words on this occasion, for Judge Abbott was my friend, the friend of many years. During a large part of the time I knew him intimately. We were admitted to the Bar almost contemporaneously — he to that of Middlesex in 1837, I to that of Suffolk in 1840. Speaking, therefore, from a long personal knowledge, I fully endorse all that is said of him in the memorial. It sets forth without exaggeration his merits as a lawyer, a judge, a citizen, and a man. In my judgment such is the opinion of the Bar, the Bench, and all who knew him.

When reading for the Bar, Judge Abbott was a faithful and diligent student. He knew that there was no royal road to professional eminence; that the labor required was severe, and that long and careful preparation was needed for the successful discharge of the arduous duties of attorney and counsellor. He felt with Lord Bacon that "every lawyer was a debtor to his profession from which he seeks countenance and profit, and should endeavor by way of amends to be a help and ornament thereto." Pursuing his studies in this spirit it is not surprising that he was well equipped for professional work when his name was placed on the honorable roll of attorneys-at-law.

His talents and temperament well fitted him for the successful practice of the law, which demands not only abilities of high order but peculiar abilities. Patient, pains-taking, and laborious in the preparation of his cases, when he reached a conclusion as to the law and facts therein he had the courage of his convictions, and his advocacy was earnest, zealous and bold. He always had faith in himself and his cause, and no disturbing doubts discounted his intense energy.

As might be expected he soon reached a high place among the distinguished lawyers of both Middlesex and Suffolk; and I may here say, that during his time no part of the Commonwealth had lawyers and advocates of greater ability than these counties.

Judge Abbott secured, from the start, a large business, and the records of the Court show that for years he was employed for plaintiff or defendant in most of the important suits. He could accomplish a vast amount of business in a comparatively short time, because of his great capacity for work, his systematic habits, his learning, and his ability to see at once and grasp the principles of law involved in his cases. He was always interested in his work, and carefully and conscientiously prepared it, doing nothing in a sluggish or prefunctory way. Espousing the cause of his clients with vigor and earnestness, he never wearied in his efforts in their behalf, and there was no relaxation of this vigor whether the amount involved in the controversy was large or small. Doubtless some of his zeal came from that love of victory, that "*gaudium certaminis*," which naturally animates the advocate.

In his bearing to the Court he was always respectful, and in his relations to the Bar he never forgot those courtesies which give grace to professional intercourse and lightens professional labors.

In the conduct of his business he was always controlled by the highest principles of honor and fair-dealing. All could rely upon his word; all knew that his promises and agreements would be honestly performed. While ever faithful to the interests of his clients, he never ignored what was due to the cause of truth and justice — forgot that the public had claims upon the profession which should be recognized. It may be truly said that when filling the high position of judge, he discharged its difficult and laborious duties to the satisfaction of the profession, for he possessed, in an eminent degree, those valuable judicial virtues — patience, impartiality, and industry. His long experience in the trial of causes before coming to the Bench, enabled him to see at once the real points of the cases before

him as judge, and his quick perception of controlling facts, enabled him to guide the trials so as to save time and assist the juries in their duties, without encroaching upon their rights or those of lawyers or litigants. He rarely erred in his rulings, as the Reports show they were generally sustained by the Supreme Court. Thus fitted for the successful discharge of judicial work, his resignation from the Bench was regretted by the Bar as a public loss.

Judge Abbott's studies were not confined to the law. He was interested in many of the grave social problems which are occupying the attention of thinking minds wherever there is culture, and it was evident to those who enjoyed the privilege of his conversation, in his hours of relaxation from business, that his investigations of some of these subjects were neither slight nor superficial. He was at times greatly interested in public affairs and in questions of government and administration, holding therein, as might be expected from his temperament, positive and fixed opinions; but however widely he differed from others therein, such differences never caused enmity nor alienation, for all knew he was entirely honest and conscientious in his convictions.

Judge Abbott has done the work of his life faithfully and well. He has furnished an example of devotion to professional duty which all who would obtain eminence at the Bar, should follow; they should adopt his motto — the motto of the true lawyer everywhere — *Pro clientibus saepe, pro lege, pro republica semper.*

REMARKS OF HON. CHARLES L. WOODBURY.

May it please your Honor: —

What my brethren have already said of our deceased friend, has been so well said that nothing remains for me but to add the tribute of my regards.

Judge Abbott was an able lawyer and a distinguished citizen of this Commonwealth. Brought up here in Middlesex, where the reputation of its Bar for a century has been so deservedly brilliant for legal lore, he began his studies and practice under the stimulus of the high standard of learning and skill that had long distinguished this Bar. Well did he respond to it.

The native keenness of his mind, his love of study, the energy with which he mastered the great principles of law and equity led him onward. He saw, like Webster, that there was room at the top,

and he reached among the leaders of the Bar a place so distinguished that his name will go down to posterity on the roll of the county of his birth as one of her most eminent lawyers. His sound and strong judgment, his unwearying perseverance, his careful study of his cases, his ready resources in a trial, and his clear, terse and impressive eloquence made their mark in the State and Federal Courts. His legal reputation was not bounded by the limits of state or section. His arguments before the Supreme Court at Washington spread the reputation he already had made at home. For thirty years he stood among the leaders of our Bar; how then can a single sentence now express his qualities or describe his works?

Judge Abbott was more than a lawyer. He reverenced the memories of the great men who founded our liberties and built our free institutions. He revered their work. The study of the Constitution of the United States was a passion with him. He believed in the principles of self-government, nothing doubting that the freedom of thought and development of judgment acquired by the exercise of its responsibilities would place the prosperity, happiness and intelligence of the people of the states of this Union on the broadest basis known to human government. He contributed his share as a citizen to the public welfare. He studied the statesmanship of his country in its foreign and domestic relations with the thoroughness due to his ability and patriotism. The breadth and strength of his grasp on public affairs are recorded in the annals of the General Court and of Congress. His public speeches bear their testimony to his generous sympathy with the interests of the people, to the cautious intelligence with which he guarded the perpetuity of their liberties. Amid the usual conflict of political opinion natural to our frame of government, the sincerity of his convictions was never doubted. In the broad fields of history, science and literature, the Judge was a constant gleaner of food for his active and reflective mind.

With all his earnest nature Judge Abbott also was a man of kindly intercourse, generous and helpful to young men in his profession. Frank in the expression of his sentiments, he abhorred a mean thing and was always ready to do a kindly one. He was popular at the Bar, had the confidence of the Bench, and commanded the respect of all who knew him. Age did not destroy his habits of industry. His books, his farm, his family and his profession filled the measure of his daily employment to his absolute content. He was active in body as well as mind. Within a year of his death he told me that

he walked daily two and a half miles to his office and as far on his return. To the junior members of the Bar I would say there is much of worthy example to be found in the life of this sturdy, high-minded, energetic and accomplished gentleman whose loss we deplore.

We shall hear his eloquent voice no more in this Court Room, but the grasp of his vanished hand will linger on our nerves, and kind memories of him will long throng within these walls.

REMARKS OF CHARLES COWLEY, ESQ.

May it please the Court: —

After so much has been said, and so well said, in praise of Judge Abbott, there is no need that I should pass his career in further review. But in all this chorus of eulogy, one voice has been conspicuous by its silence; one well-known figure has been "conspicuous by its absence." Judge Abbott's life as a lawyer ran for many years on parallel lines with that of General Butler; and this occasion would not have been permitted to pass without a tribute from General Butler, were it not that an engagement before the United States Circuit Court of Appeals in Boston at this very hour deprives us of the General's presence here, and deprives him of the mournful satisfaction of laying upon Judge Abbott's bier the tribute of his affection and esteem.

In connection with what has been said by the distinguished gentlemen who have preceded me, in relation to Judge Abbott's uniform maintenance of the highest standards of personal and professional honor and integrity, I can testify that during my connection with his office, oral agreements were made almost every day with other law offices, particularly General Butler's office, touching cases to be tried, and that they were always religiously kept. No lawyer that made an oral agreement with the office of Abbott & Brown, ever had cause to blame himself for not having it put in black and white. All the agreements made between that firm and the office of Butler & Webster, were made orally, excepting those which the law or the rules of court required to be made in writing. In later years, when I have found myself, again and again, the victim of misplaced confidence in the oral agreements of other counsel, I have thought how much pleasanter the practice of law would be, how much more life would be worth living, if all lives were controlled by the same high principles which controlled his life.

I would not violate the proprieties, I might say the sanctities, of this hour which your Honor has dedicated to Judge Abbott's memory, by introducing any subject of controversy, and I shall not do so by referring to his course as a member of the electoral commission of 1877, and particularly to his course as a member of the Congress to which that commission reported its decisions touching the electoral votes of the four contested states. As is well known, he was one of the minority of seven, against the majority of eight. But there are comparatively few who know how great a service he rendered to the country by insisting on carrying into effect the decisions of that majority when they came up for action in Congress. "The austere glory of suffering to save the Union," in the judgment of Rufus Choate, was the highest glory of Daniel Webster. By the sacrifices which he made in seating President Hayes, the same "austere glory" was won by Judge Abbott.

Among the Democrats then in Congress, particularly in the House of Representatives, there were many who smarted under the feeling that their candidate had been defrauded, and who strongly favored resort to extreme measures to prevent the consummation of the work of the commission. This could only be done by obstructing in Congress the counting of the electoral votes which the commission, by a vote of eight to seven, had decided to be entitled to be counted; and they undertook, by every variety of argument, and by every form of persuasion, to induce Mr. Abbott to co-operate with them to that end; but he stubbornly refused. Finding it impossible to secure any sort of active assistance from him, they called on him and labored with him all night, making the most urgent efforts to induce him to aid them passively by abstinence from action. Among other suggestions pressed upon him, perhaps the most plausible was this, that having voted in the commission against counting the Hayes electors from Florida and Louisiana, he was not obliged to vote for them in the House. No effort was spared, first, to induce him to absent himself from his seat in the House when the votes were to be counted; second (failing in the first), to induce him to refrain from speaking in the House in support of the decisions of the commission, from which he himself had dissented; third (failing in the second), to induce him to refrain from voting in the House in favor of those decisions. All these appeals, though made by his political friends, he met with an emphatic No. Nothing could induce him to ignore the distinction between his duty as a member of the House and his duty as a member of the commission. He held himself and his party bound to abide in good faith by the decisions of the majority

of the commission, though he denounced those decisions as utterly wrong. He saw clearly, though he bitterly regretted it, that the decisions of the majority of the commission left the United States no alternative but to seat Mr. Hayes under the forms of the constitution, though in violation of its spirit, or to permit General Grant to hold over as president by consent; and like a true patriot he rose above party, and assisted in counting for Hayes all the votes which the commission had decided to belong to Hayes. Seldom has the patriotism of a public man successfully borne such a test. No advantage to his own party could tempt him to contribute, either actively or passively, to dispense with the forms of the constitution. He saw that future presidents would come and go, as past presidents had come and gone, like shadows; but that "government of the people, by the people, for the people," could only be preserved by a firm adherence to constitutional forms. Time has approved his decision.

It seemed to me entirely proper that I should recall the memory of this great episode in Judge Abbott's public life, here in the county which gave him birth. Of the fifteen members of that electoral commission, two were natives of Middlesex — Judge Abbott and Senator Hoar. General Garfield was not born in this county, but his ancestors were, and one of the purposes for which he left the White House on the morning when he was shot, was to visit the homes of those ancestors in two Middlesex towns. Middlesex County was well represented on that commission. She has generally been well represented on great occasions. I am glad to see her so well and so largely represented here to-day.*

REMARKS OF JUDGE RICHARDSON.

Gentlemen of the Bar:—

There is a propriety, as you have so well said, in your selection of a court in this county in which to present this expression of your respect for the character, and tribute to the memory, of your distinguished brother; not that his professional work was all, or even

* Hon. William D. Northend of Salem, who was expected to be present as a representative of the Essex Bar, was prevented by his duties elsewhere from laying his wreath upon the bier of his friend of many years. As a member of the State Senate in 1861, he was peculiarly cognizant of the part taken by Judge Abbott at the beginning of the Confederate War; how he urged the calling of a special session of the Legislature, the establishment of camps of instruction and other war measures. Governor Andrew wrote to Senator Northend, urging him to confer with Judge Abbott as to the best measures to meet the new conditions which the war had created. With characteristic foresight, the Governor wrote, "When we get a session of the Legislature, we ought to be prepared in advance with bills approved by leading members of the Senate and House, so that no time shall be lost by delays or by casting about for a policy."

chiefly, done here, for we know that it was not; but because at the Bar in this county was the beginning of his long and notable career as a lawyer, and he was prominently and actively identified with many large business enterprises, and with the growth of the largest city, located in this county; and it is fit that where the foundation of his career was laid and formed, should be found this record of your appreciation and approval, at its completion.

Not only that. I think that however much he may have valued the good opinion of the world in general, he especially prized the favorable judgment of you, who were in practice with him at this Bar, and who knew him so intimately and so long.

Judge Abbott resigned from the Bench of the Superior Court for the County of Suffolk in 1858, about two years before the present Superior Court was established. I have always supposed that he could have gone upon the Bench again if he desired, but that active practice at the Bar, with its greater personal freedom, was more congenial and attractive to him, and it certainly was more lucrative. For many years after his resignation he enjoyed a large and remunerative practice, and became an authority in the law of railroad corporations, a branch or body of law which he saw grow up and develop into a system of laws and regulations of such magnitude, that their due administration occupies a very considerable part of the time of legislatures and courts.

He lived in a famous period of the Middlesex Bar. One of his biographers has said that Webster was educated into a lawyer by being often opposed by Jeremiah Mason. Judge Abbott had hardly less advantageous instruction — or discipline — from the group of very great lawyers of this Middlesex Bar, whom he used to meet a quarter of a century or more ago, several of whom, at a venerable age, prove by their presence and words here to-day, their sincere respect for the life and character which you have briefly, but so well, described in your memorial address.

He enjoyed the advantage of membership in another body of remarkable men, which, from the accounts which have come down to us in many ways concerning them, as well as from the published proceedings, was not only a distinction but must have been itself a liberal education, at least upon great questions of the first importance in the administration of law in the Commonwealth. I refer to the Constitutional Convention of 1853, in which were Choate, Bartlett, Rantoul, Hillard, Butler, Dana, Morton, Otis P. Lord, Greenleaf, Train, Prince, Aldrich, Charles Allen, Hallett, Dawes, Sumner, Peleg

Sprague, Joel Parker, Nathan Hale, and others like them, constituting an assemblage of men which, for learning, ability, and high character, I think, has not been surpassed in this country in this century.

I first knew Judge Abbott when I was a student in an office with which he had much business, and from that time to the time of his last appearance in court — about thirty years — I met him very often, and whether for business or otherwise, always with pleasure. He sympathized with a young lawyer who had to depend upon himself. He looked at life and business seriously and was always in earnest. Perhaps he needed, in the later years of his life, greater occasions than the ordinary contentions in our courts to call out his full power; at least, I had this impression after hearing, about twelve years ago, an argument of very great power and eloquence made by him in the Supreme Court of the United States, when it was obvious that he felt the stimulus incident to addressing that great tribunal in an important cause.*

But he was not a lawyer merely. He was a student, a great reader of books, a man of business, and took an active interest in public affairs. He held many positions of confidence and trust, and honorably performed his duty in them all. He hated shams, pretence, and hypocrisy, and did not deny himself the pleasure of showing it when in his opinion he ought to do so. He had a positive individuality. He was loyal to his cause, his clients, and his friends. Socially he was a dignified, courtly, gracious gentleman.

The record to be made here now is of no consequence to him, but it concerns us, and is of interest to the Commonwealth. It is important that it be made certain that every person who renders conspicuous service to the Commonwealth, who contributes to her prosperity, to her power, or to her honor, shall in his appropriate place, have that share in her good name, and that place in her annals, which he deserves.

In compliance with your request, your memorial, with a memorandum of these proceedings, will be placed upon the records of the court, and, as a further mark of respect, the court will adjourn.

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* This was the case of Land Company *v.* Daniel Saunders, 103 United States Reports, 316.

PROCEEDINGS OF THE BAR ASSOCIATION

— OF —

THE CITY OF BOSTON.

At a meeting of the Bar Association of the City of Boston, held Oct. 8, 1892, John A. Loring, Esq., said he had been requested by the committee appointed at a previous meeting to prepare a resolution with regard to the death of Judge Abbott, consisting of Messrs. Causten Browne (chairman), Benjamin Dean, and Jabez A. Sawyer, to present the following resolution, which he then read: —

Resolved, That the secretary be directed to place on record the following expression of the sense of the Association with regard to the death of the late Josiah G. Abbott.

Josiah Gardner Abbott, an honored member of the Boston Bar Association, born at Chelmsford, Massachusetts, Nov. 1, 1814, was graduated at Harvard in 1832, admitted to the Bar in 1837, served as Associate Justice of the then Superior Court of the City of Boston from 1855 to 1858, and upon his resignation of that office, took up his residence at Boston, and continued in the practice of law as a member of the Suffolk Bar until his death at his home in Wellesley, Massachusetts, June 2, 1891.

The professional career indicated thus briefly was in a very high degree useful, honorable, and distinguished. Brother Abbott was a well-read and broad-minded lawyer, a judicious and candid adviser, an earnest, able and eloquent advocate, an upright, fearless, vigorous, justice-loving judge.

All his professional work bore the stamp of clear intelligence, purity of purpose, manliness, frankness, and integrity. In his inter-

course with the brethren of the Bar, they found him always straightforward and magnanimous, dignified and courteous, intolerant only of chicane, affectation, or trifling, a knightly foe, and a steadfast and loyal friend.

His professional career throughout stood for an example of the best principle and the best conduct, and is remembered by us to-day as a valuable part of the heritage of the Bar.

Called, on many occasions, to undertake important duties in public life, he acquitted himself always with honor and distinction; and the Bar joins with the public in recognizing our common debt of gratitude for his services, his influence, and his example as a citizen of our Commonwealth and country.

[Signed.] Causten Browne,
Benjamin Dean,
Jabez A. Sawyer.

REMARKS OF JOHN A. LORING, ESQ.

It were vain for me, Mr. President, to attempt to add to what these resolutions so truly and emphatically express in regard to our late deceased brother. The first I ever heard of Judge Abbott was when I was a lad in the town of Andover, where I was born; and his first American ancestor was one of the first settlers of that town, and *his* descendants are scattered throughout various sections of the country, and many of them are in the old town now.

The first I knew of him was as a leading Democrat at Lowell, and after that as a leading member of the Bar of Middlesex County, and afterwards as a Judge of the Superior Court and as a leading lawyer in Suffolk County. I have been associated with him, and have been against him, and never did I meet with more courteous treatment from any brother in the profession than from him. He was my friend, and for the last ten years I have known him intimately, and have seen him in the private walks of life—in his own household. He was a model husband and father. His abilities are recognized by all, and also his fairness and magnanimity.

I will add to the resolution offered by the committee, the following:

Resolved, That a copy of these resolutions be furnished to the family of the deceased.

REMARKS OF WILLIAM G. RUSSELL, ESQ.

There is an age at which it is becoming that one should speak on an occasion like this; there is an age at which it is more becoming to be present and to be silent. It may be that, for me, the latter period is reached. Be that as it may, I cannot be silent where silence would seem to indicate failure to recognize the worth of one who was a friend for more than forty years.

Strength and vigor were the striking characteristics of Judge Abbott. They were illustrated in every feature, every line, of his marked countenance, and of his manly form as he strode along the city street or the country by-way, or stood at the Bar, or sat in council. The strength and vigor were intellectual or they were physical. They were demonstrated in a long life of contest at the Bar, in the political arena, and in the short term of service upon the Bench, in which he showed his capacity to fill any judicial position however high.

It is not of those traits, however, that I would now speak; but rather of those personal traits which attracted and attached to Judge Abbott those who came within the closer sphere and knew him intimately. In his terse way he would say of another, "He had a heart as big as an ox." I am sure that is what he would best like to have said of himself, and it is truth to say it. He was warm-blooded, warm-hearted, earnest, impulsive, vehement in expressing what he sincerely felt. This gave him half his force — it gave him much more than half his power to charm. He had a high, keen sense of honor. In a time and country where the code of honor, so-called, prevailed, it may well be supposed that he would not have gone through life unscathed, or at least without meeting an adversary; for he had, as he transmitted, fighting blood. Yet in council and in action he was calm and judicious in matters involving personal right and honor. More than once when some younger brother has come for aid on questions of personal or professional conduct, Judge Abbott's advice has been sought, and on such questions his judgment always rang true. No man in such case, under his advice, ever sacrificed his self-respect, many a one has avoided a needless quarrel. It is not a paradox that the best fighter may be the best peace-maker.

Judge Abbott was at times hasty in speech. It is possible to respect, it is difficult to find one who never is so. But he had that

innate kindness of heart which will cause to be blotted from the record many a stray expression, and will place in its stead many an act of charity, good feeling and brotherly love. That record is made up, and it is one of which we, his brethren, may well make note, and in which we may well take pride.

The question being put the resolutions were unanimously adopted.

APPENDIX.

Draft of the Address Prepared for the Minority of the Electoral Commission of 1877,

BY THE HON. JOSIAH G. ABBOTT, LL.D.

The following is the text of the proposed address of the minority of the electoral commission of 1877, protesting against the decisions of the majority of that commission; referred to on pages 39, 44, 45, 73 and 74 of this volume: —

To the People of the United States: —

The minority of the joint commission established by the act of Congress of Jan. 27, 1877, to decide questions arising in the count of the electoral votes, desire to address the people of the whole country on the subjects submitted to and decided by that commission.

No more important questions can ever come before any tribunal or people for consideration and determination. Upon their determination depends who shall be the president of this country, and whether he shall owe that great office to the free, honest choice of the people, or to bribery, forgery and gross fraud.

The minority of that commission, by the law establishing it, had no opportunity of reporting the reasons for their action to the two Houses of Congress. The presence of a stenographer at these consultations was denied, so that no record thereof exists. No way is open to those who did not join in, but on the contrary protested against, the decisions of the commission, to make public their protest except by this address.

The returns of the electoral vote of four states — Florida, Louisiana, Oregon and South Carolina — were submitted to and decided upon by the commission.

FLORIDA.

In the case of Florida there were three certificates. The first, signed by the governor, certified that the four Hayes electors were elected according to the law of Florida and the acts of Congress. The second was signed by the attorney general, and the third by the governor elected on the seventh of November last; and both certified the election of the Tilden electors. The attorney general was one of the three persons first canvassing the votes.

To the third certificate were attached certified copies of all the returns of votes from every precinct in the state, which were originally made to the secretary of the state, together with an act of the Legislature providing for a new canvass of the vote, according to the law as it had been decided by the Supreme Court, and the result of the new canvass thus ordered.

It was offered to be proved, and it was not denied that such was the fact, that by counting all the votes returned to the secretary of state, according to the law of Florida as expounded by the Supreme Court, the Tilden electors had been duly elected.

It was offered to be proved, and was not denied, that the Tilden electors commenced proceedings in *quo warranto* against the Hayes electors in the court of that state having jurisdiction by its constitution, notice of which was served on the latter before they gave their votes, and as soon as they were declared elected, and which was prosecuted to this judgment — that the Hayes electors had not been elected and had no title to the office, but that the Tilden electors had been legally elected and were entitled to the office.

It was offered to be proved, and was not denied, that the two canvassers who had made the certificate of election of the Hayes electors, which by the law of Florida was made only *prima facie* evidence, had erred in their construction of the law and exceeded their jurisdiction by so doing, in their canvass of votes on which the certificate was based.

Thus, it was offered to be proved, and the facts were not denied that the governor's certificate given to the Hayes electors was false, and that the determination and certificate of two of the three who made up the board of canvassers was false in fact and in violation of the laws of Florida, and that in making it the two had exceeded their jurisdiction. It was offered to be proved that the Supreme Court of Florida had, in effect, decided that the two canvassers had made a false certificate and exceeded their jurisdiction, and that the

Circuit Court had so decided. It was offered to be proved that both the Legislature and the executive of the state had so determined and had attempted by all means in their power to prevent the state being defrauded of its true and real vote.

The majority of the commission decided that the determination and certificate of two of a board of three canvassers, with ministerial powers only, and which by law was *prima facie*, not conclusive, evidence, must stand and decide the great question of the presidency, although it could clearly be proved to be false in fact, and that in making it the two canvassers had exceeded their jurisdiction and authority, as held by the Supreme Court of the state, and although the Legislature and governor had both declared it false, and that by giving effect to it the state would be defrauded of its true and real vote; and although the electors, in whose favor it was made, had been declared by the courts not to have been elected. The injustice of this decision was the more marked and flagrant by contrast. All the state officers, from the governor down, who were voted for on the same ticket with the Tilden electors, and had been counted out by the same two canvassers, at the same time, and by the same canvass by which the latter were counted out, had been declared elected by the action of the highest court of the state, and are now and have been holding their several offices to the general contentment of the citizens of Florida. But the Hayes electors alone are permitted by this decision to consummate the wrong, and act in offices to which they were never elected.

Against this decision of the commission the undersigned protested and now protest as wrong in law, bad in morals, and worse in the consequences which it entails on a great country.

It gives absolute power to two inferior ministerial officers to withhold their determination till the day when the electoral vote is cast, as was done in this case, and then give the vote of a state to a candidate who has never received it, as was done in this case, and tells the people there is no redress for such an outrage.

It is a decision admirably calculated to encourage fraud, and ensure its being perpetrated with success and impunity.

It is a decision by which the people of a state may be defrauded and robbed of their dearest rights by a few unprincipled wretches, and be then compelled to acquiesce in the great wrong.

It is decision claimed to be based on the doctrine of state rights, but, in fact, is in direct conflict with that grand doctrine, for by it, states and the peoples of states can be stripped of their rights and liberties, with no power to resist.

We protest against the decision finally because by it the people of the whole United States are defrauded and cheated; because by it, a person is put into the great office of president, who has never been chosen according to the Constitution and law, and whose only title depends on the false and fraudulent certificate of two men in the state of Florida, instead of a majority of the legal voices of the whole people, declared through and by their electoral colleges.

LOUISIANA.

In the case of Louisiana, the decision of a majority of the commission is a stupendous wrong to the people of that state, and all the other states, and in defiance of all right, justice, law, and fair dealing among men.

The law of that state establishes a returning board to consist of five persons of different parties, with power to fill vacancies, and to canvass and compile the returns of votes from the different parishes and precincts, and declare the result. The board is given power and jurisdiction, provided affidavits are annexed to and received with the return from any precinct or parish, to inquire whether intimidation has existed, and if it is established to throw out the return for such parish; but this jurisdiction is carefully confined to cases where affidavits are attached to and returned with the returns of the votes; in no other case whatsoever is the power to reject votes given.

It was offered to be proved, and was not denied, that the board giving the certificate to the Hayes electors consisted of four persons — all of the Republican party — instead of five persons of different parties, as required by law; that these four members had been requested and required by Democrats to fill the vacancy with a Democrat, but had uniformly refused to do so.

It was offered to be proved, also, that this board of four persons — all of the Republican party — in order to perpetrate the frauds with ease and impunity, employed five disreputable persons as clerks and assistants, all of whom had been convicted, or were under indictment, for various offences, ranging from subordination of perjury up to murder. Indictment, at least, if not conviction, seemed the only admitted qualification of employment by that extraordinary board.

It was offered to be proved, and was not denied, that this board, in order to give the certificate of election to the Hayes electors, had rejected ten thousand votes, and this was done, although not a return thrown out had been accompanied by the requisite affidavit to give jurisdiction to act at all.

It was offered to be proved that the members of this returning board in order to give the certificate of election to the Hayes electors, had resorted to and used affidavits known by them to be false and forged, had themselves been guilty of forgery, and had been paid for making their determination, thus adding bribery to the catalogue of their crimes.

Numerous other corrupt and fraudulent practices were offered to be proved against the members of this returning board, among the least of which was a wicked conspiracy to rob the people of Louisiana of their rights and liberties.

The decision of a majority of the commission rejected all this evidence, and held that the certificate of election given to the Hayes electors must stand, and could not be inquired into, if all such offers of proof could be substantiated.

By that decision the people of the United States are told that the certificate of a board constituted in direct defiance of the law establishing it, and made by grasping a jurisdiction never granted to it, arrived at by forgery, perjury, wicked conspiracy, and the grossest frauds, and finally bought and paid for, must stand, and cannot be set aside; that although thus steeped in sin and iniquity, it must make the chief magistrate of a great, free, and intelligent people.

The undersigned protest against this decision, also, as bad in law, worse in morals, and absolutely ruinous in its consequences.

They denounce it in the presence of the people of the United States, and in the face of the world, because, if intended and designed for such a purpose, it could not have been more cunningly contrived than it is to encourage the grossest frauds, conspiracies and corruptions in the election of a president.

They denounce it, because it will debase the national character, deaden the public conscience, and encourage fraud and corruption in all the public and private transactions and business of the people.

They denounce it, because for the first time it declares to the people that by their organic law, the Constitution, it is ordained that a man may seek for, obtain, and hold this great office of chief magistrate of two and forty millions of freemen by fraud and cheating.

Nay, more, that he may openly buy the votes to elect himself, and pay down the price when the purchase is consummated by the count by the two Houses of Congress, and call them to witness the payment; and that there is no help for it but revolution.

They denounce it, because, in effect, it puts up the great office of president at auction, and says to the whole world that it may be

bought in safety, and that there is no way known to man by which the title by purchase can be disputed or gainsaid.

OREGON.

In the Oregon case, a certificate signed by the governor and secretary of state, and under the great seal of the state, certified to the election of two Hayes and one Tilden elector. The three Hayes electors produced no certification of election signed by any person — only a certificate of certain results — from which it was claimed that it could be inferred who were elected. The law of Oregon required a list of the persons elected to be signed by the governor and secretary of state, under the great seal, and this requirement, as well as that of the acts of Congress, was fully met and satisfied by the first certificate. There was no certificate in the second case in any manner complying with the laws of Oregon or the acts of Congress. Yet by the decision of the commission, the first certificate was rejected and the second taken, although clearly neither in conformity with state or federal law.

The undersigned voted against counting the vote of the Tilden elector, because, notwithstanding the certificate of the governor and secretary of state, they were satisfied he had not been elected by the people of Oregon, and that his vote would not have been the true vote of that state.

The majority of the commission decided to set aside and reject the certificate and return, precisely the same in character that they had holden to be conclusive against all evidence in the Florida and Louisiana cases. They adopted and acted on a certificate insufficient if they regarded their former rulings, under any law, state or national.

The undersigned denounce the Oregon decision as utterly at war with and reversing the rule established in the two former cases, and because it changes the law to meet the wants of the case, establishing different rules applicable to the same facts to bring about a desired result.

In the Florida case, where the evidence failed to establish the fact, the majority of the commission voted to receive evidence to prove one elector held an office of profit and trust under the United States when appointed.

In the Louisiana case, where there was no doubt that two electors held such offices when appointed, it was voted not to receive

evidence of the fact, because it was not offered to be proved that they continued to hold such offices where they voted.

Apparently, the rules change as the requirements of the case change.

SOUTH CAROLINA.

In South Carolina the undersigned voted against the Tilden electors being declared elected, because they had not received a majority of the votes of the people.

In that case it was offered to be proved, in substance, that United States troops in large numbers were sent to the state before the election, for the purpose of influencing and controlling the votes to be given thereat, by interfering with and overawing the people, and that the militia of the state was used for the same purpose; that the polls were surrounded by armed bands, who by violence and force prevented any exercise of the right of suffrage except on one side; in fact, that the election was controlled by the armed forces of the state and nation, and a resort to all manner of brutality, violence, and cruelty, and was not free.

The majority of the commission refused to admit the evidence, on grounds that would fairly warrant a president of the United States in using the whole army to take possession of all the ballot boxes in any state, and allow no voting except for himself if he was a candidate for re-election, or for his party, and which would require both Houses of Congress to recount the vote so obtained, and to give him the fruits of such a wilful and wicked violation of all constitutional law and right.

If any decision better calculated to destroy the liberty of a free people, to destroy all faith in a Republican form of government, a government of the people by the people, could be devised and contrived, the undersigned have not been able to discover it.

They denounce the decision as an outrage upon the rights of all the people, and, if sustained, and acted on, as the utter ruin of our institutions and government.

The foregoing is a brief statement of the action of the commission. To defeat that action the undersigned have done all in their power. They protested against it before it was accomplished, and they protest against it now.

They know the commission was established to receive evidence, not to shut it out.

They know the conscience of this great people was troubled by fear that any one should obtain the high office of president by fraud, cheating and conspiracy, and that it demanded that the charges and counter-charges of corrupt practices in reference to the election in three states should be honestly investigated and inquired into, not established and sanctified, by refusing all inquiry and examination.

They know the conscience of the whole people approved the law establishing the commission, nay, hailed it with joy, because it established, as all believed, a fair tribunal, to examine, to inquire into, and determine the charges of fraud and corruption in the election of three states; and they believe that this conscience has been terribly disappointed and shocked by the action of the commission, which establishes fraud and legalizes its perpetration, instead of inquiring into and condemning it.

The undersigned believe the action of the majority of the commission to be wrong, dangerous, nay, ruinous in its consequences and effects.

It tends to destroy the rights and liberties of the states and of the United States and the people thereof; because by it states may be robbed of their votes for president with impunity, and the people of the United States have foisted upon them a chief magistrate, not by their own free choice honestly expressed, but by practices too foul to be tolerated in a gambling hell.

By the action of the commissson, the American people are commanded to submit to one as their chief magistrate who was never elected by their votes, whose only title depends on fraud, corruption, and conspiracy.

A person so holding that great office is an *usurper*, and should be and will be so held by the people. As much an usurper as if he had signed and held it by military force; in either case, he equally holds against the consent of the people.

Let the people rebuke and overrule the action of the commission. The only hope of the country rests on this being done, and done speedily and effectually, so that it may never become a precedent to sustain wrong and fraud in the future.

It is the first and highest duty of all good citizens who love their country to right this foul wrong, as soon as it may be done under the Constitution and laws.

Let it be done so thoroughly, so signally, so effectually, that no encouragement shall be given to put a second time so foul a blot on our national escutcheon.

The original manuscript of the foregoing address was destroyed; but the proof-sheets, corrected by Judge Abbott, have been preserved, bound together, and placed on private deposit in the Public Library of the City of Boston, where they are marked and numbered H 90*a* 11. These proof-sheets bear the following endorsement in Judge Abbott's own hand:

> "This address was drawn up by me at the request of some of the minority members of the electoral commission, to whom it was submitted, and approved by them. But some doubted the wisdom of publishing the address at the time, and so it was not signed.
>
> "J. G. Abbott."

This proposed address was first published in the twenty-seventh volume of the Magazine of American History, February, 1892, pp. 81–92, as an important historical state paper, eminently worthy of consideration and preservation.

The arguments made by Judge Abbott in the consultations of the commission on the cases of Florida, Louisiana, Oregon and South Carolina, are reported, in substance, on pages 932–955, of the volume printed by Congress, entitled, "Count of Electoral Votes: Proceedings of Congress and Electoral Commission, 1877." They are specimens of his best work in advocacy. He never put forth his full powers except when he had a cause to establish, or an opponent to demolish; and when he had several opponents, he always grappled with the strongest. Thus, in discussing the case of Florida, he grappled with Senator Edmunds, Senator Morton, and (though he does not mention him by name or office) with Judge Bradley, whom the democrats had expected to vote with them, but who finally, perhaps

through the influence of Judge Miller,* voted with the republicans.

In discussing the case of Louisiana, in the commission, Judge Abbott aimed his guns directly at Miller, citing against him his own decision in the case of Schenck *v.* Peay,† turned Miller's own batteries against him, and closed this *argumentum ad hominum* by saying: "I commend this decision of Mr. Justice Miller to the careful consideration of Mr. Commissioner Miller." At this point, the sensation in the commission was intense. The words above quoted were toned down by Judge Abbott in the published report.

In discussing the case of Oregon, he again "locked horns" with the senators from Vermont and Indiana — Edmunds and Morton; and in discussing the case of South Carolina, he had another shot at Judge Bradley. It is not, however, proposed to consider the doings of the commission here,‡ but only to call attention to them as showing how well Judge Abbott sustained himself in that conflict of giants in, perhaps, the highest theatre in which he ever exercised his marvellous powers.

Judge Abbott and Samuel J. Tilden had been personal and political friends for many years. They had been in the Free Soil movement together in 1848. One of the judge's sons, Franklin Pierce Abbott, had studied law in Mr. Tilden's office. When he saw that there was to be trouble over the counting of the electoral votes,

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*Mr. Seymour D. Thompson writes: "Bradley had drawn up an opinion on the other side of the Florida question, but Miller argued with him so strongly that he induced him to change his views."—*26 American Law Review, p. 432, May-June, 1892.*

† Woolworth's U. S. Circuit Court Reports, 175.

‡ For a republican view of the electoral commission, see Blaine's Twenty Years in Congress; for a democratic view, see Cox's Three Decades of Federal Legislation; for a foreign view, see Bryce's American Commonwealth. Other views might be cited, but no student of our political history, and no lawyer, should fail to read the volume above quoted, published by Congress.

Judge Abbott called on Mr. Tilden at his house in Gramercy Park, and had a long interview with him. Finding Mr. Tilden undecided, he urged him to consider the situation well, and to announce some course which his supporters might follow. The situation called for resolute action. But Mr. Tilden did not — perhaps he could not — determine upon any policy. In this supreme crisis of his life he seemed paralyzed and incapable to act. As Rufus Choate said on a different occasion, "He saw the situation; he hesitated — and was lost, *lost*, LOST!"

JUDGE ABBOTT'S LETTER DECLINING THE NOMINATION FOR ATTORNEY-GENERAL.

The following is the original draft of Judge Abbott's letter to the president and secretary of the Republican State Convention of 1861, declining the nomination for attorney-general, referred to on pages 23 and 24. The sentence enclosed in square brackets is omitted in the letter as published by Mr. Stockwell in the Boston Journal at the time:

BOSTON, 14th of October, 1861.

HON. H. L. DAWES, *President*,
STEPHEN N. STOCKWELL, ESQ., *Secretary*.

Gentlemen: — Your favor of the third instant, directed to me at Lowell, reached me some days since. In it you inform me of my nomination for the office of attorney-general by delegates from all parts of the Commonwealth assembled in convention at Worcester. I desire to express through their officers my sincere acknowledgment to the gentlemen of that convention for this kind and entirely unexpected expression of their consideration. I have carefully and anxiously considered and weighed the matter. The offer of so important and honorable an office from those differing from me on political subjects, is necessarily gratifying, and from that fact the

more embarrassing, but for reasons upon the whole satisfactory to my own mind, not necessary to be given, I do not feel compelled by an imperative sense of duty to accept the nomination, and therefore must respectfully decline it.

Permit me to add that I take this course from no want of feeling for, or interest in, the great good cause — that of the Government, the Constitution, and the Laws. In this war now being waged against the nation, I know of but one great absorbing question of political duty and that is, how shall the government and the laws be sustained, established and maintained throughout the length and breadth of the land. All other considerations in reference to our political action fade into insignificance in its presence. To solve it successfully I am willing to do and to suffer to the end. I yield to no one in my devotion, to the extent of my means and abilities, to the Constitution and its establishment in all its integrity.

[We have now but one all controlling political duty, and that is to bring all that there is of power and strength in the loyal states and people to crush rebellion and punish traitors until that Constitution and those laws, which South as well as North helped to make, and solemnly agreed to, and under whose protection both have lived and prospered, shall be respected and obeyed from the extremest limits of Maine to those of Texas.] This contest now going on seeks to impose no burden on the South not equally borne by the North. We are obliged to submit to and obey the laws — they of the South must be compelled to like submission and obedience. Until that time comes he is aiding the public enemy who suggests compromise with armed rebels. The Constitution, pure and simple, should be the watchword of all true and loyal men until armed resistance to lawful authority is once for all effectually ended.

In common with all others who love their country, I pray with all my heart and soul for that good time when the mighty power and strength of twenty millions of freemen, rich in all the arts of civilization, intelligent and brave, may be so put forth and directed to sustain the best government ever devised by the wit of man as forever to crush out this wicked rebellion against law and right. Let the government strike quickly, heavily, and overwhelmingly, and it will command all of the lives and the means of good and true men.

I remain, gentlemen, with much respect,

Your obedient servant,

J. G. Abbott.

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